IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22-12-2006

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

W.P.No.13697 and 13698 of 2002

The India Cements Limited,
'Dhun Building',
No.827, Anna Salai,
Chennai 600 002. ... Petitioner in
both petns.

vs.

1. The Assistant Commissioner (CT),
Fast Track Assessment Circle -II,
Greams Road, Chennai 600 006.

2. State Industries Promotion Corporation
of Tamil Nadu Limited,
No.19A, Rukmani Lakshmipathy Road,
Egmore, Chennai 600 008.

3. The State of Tamil Nadu,
rep. by the Secretary to Government,
Department of Commercial Taxes and
Religious Endowments,
Fort St. George, Chennai 600 009.

4. The Tamil Nadu Taxation Special
Tribunal, rep. by its Registrar,
Second Floor, Singaravelar Maaligai,
Chennai 600 001. ... Respondents in
both petns.

W.Ps. filed under Article 226 of the Constitution of India for the issue of a Writ of Certiorari as stated therein.

In both petns.:

For petitioner ::Mr.C.Natarajan, Sr. Counsel
for M/s.N.Inbarajan

For respondents::Mr.P.S.Raman,
Addl. Advocate General
assisted by Mr.Haja Nazirudeen, Spl.GP(T)
for R - 1 & 3
Mr.Devaraj for R2

W.P.Nos.37042, 40030, 40031 & 44733 of 2002 and 3230, 3231, 3232, 3233, 3234 & 21162 of 2003

W.P.No.40030 of 2002:

Hindustan Motors Limited,
Chennai Car Plant,
Adhigathur, Kadambathur P.O.,
Tiruvellore District. .. Petitioner

vs.

1. The Assistant Commissioner (CT),
Fast Track Assessment Circle -III,
Chennai 600 006.

2. State Industries Promotion Corporation
of Tamil Nadu Ltd.,
No.19A, Rukmani Lakshmipathy Road,
Egmore, Chennai 600 008. ... Respondents

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For petitioner :: Mr.C.Natarajan, Sr. Counsel & Mr.Sriprasath
for M/s.N.Inbarajan

For respondents:: Mr.P.S.Raman,Addl. Advocate General
assisted by Mr.Haja Nazirudeen, Spl.GP(T)
for R - 1
Mr.Devaraj for R2

COMMON ORDER

P.D.DINAKARAN,J.

I. THE CONTROVERSIES

1.1. In the case of expansion unit of an existing industry, whether the industry will be eligible for sales tax deferral in any financial year if the production exceeds the Base Production Volume (in short, 'BPV') for the sales made in that year in excess of the Base Sales Volume (in short, 'BSV'), is the issue that arises for our consideration in W.P.Nos.13697 and 13698 of 2002.

1.2. In the case of diversified unit of an existing industry, whether the industry will be eligible for sales tax waiver in any financial year if the production exceeds the Base Production Volume (in short, 'BPV') for the sales made in that year in excess of the Base Sales Volume (in short, 'BSV'), despite the fact that the production of the existing unit and diversified unit are totally different and the existing unit was subsequently sold to a third party, is the issue that arises for our consideration in W.P.Nos.37042, 40030, 40031 & 44733 of 2002 and 3230, 3231, 3232, 3233, 3234 & 21162 of 2003.

II. GOVERNMENT ORDERS THAT ARE RELEVANT TO
DECIDE THE CONTROVERSIES

2. Before touching the facts and circumstances pertaining to these two batches of writ petitions, it is apt to refer the Government Orders which are relevant to decide the controversies referred to above, based on which, both the petitioners, viz., India Cements and Hindustan Motors claim the benefit under the deferral of sales tax in the case of India Cements and waiver of sales tax in the case of Hindustan Motors.

2.1. The Government of Tamil Nadu, with a view to promote industrialization, introduced an Interest free Sales Tax Deferral Scheme in G.O.Ms.No.500, Industries (MIG-II) Department, dated 14.5.1990, as per which the State Industries Promotion Corporation of Tamil Nadu Ltd., the second respondent herein (in short 'SIPCOT') is the authorised agency to receive applications, sanction and disburse for medium and major industries and also to assess the eligibility of a new industry and issue eligibility certificate under the scheme. The said G.O.Ms.No.500, Industries (MIG-II) Department, dated 14.5.1990 reads as under:
"GOVERNMENT OF TAMIL NADU
ABSTRACT
Industries □ Declaration of Most backward taluks □ Incentive schemes for industries □ Interest free sales tax scheme □ Further liberalisation □ order □ issued.

INDUSTRIES (MIG-II) DEPARTMENT

G.O.Ms.No.500 Dated: 14.5.1990

Read:
1. G.O.Ms.No.305, Industries, dated 22.5.1989
2. G.O.Ms.No.423, Industries, dated 7.7.1989
3. G.O.Ms.No.563, Industries, dated 19.8.1989
4. G.O.Ms.No.564, Industries, dated 19.8.1989

ORDER:

The Government in the order second read above declared 105 taluks of this State as industrially backward for the purposes of grant of interest free sales tax loan, interest free sales tax

deferral,state capital subsidy, etc.

2. With a view to correct regional imbalances in the industrialisation in the State by giving further incentives to more backward areas, the Government direct that 30 taluks, from among the 105 industrially backward taluk be declared as industrially most backward taluks. The names of 30 taluks are annexed to this order.

3. The Government direct that the new industries to be set up in the 30 most backward taluks ordered in para 2 above and also in the three industrial complexes of State Industries Promotion Corporation of Tamil Nadu at Pudukottai, Cuddalore and Manamadurai be eligible apart from other existing concessions for full waiver of sales tax dues for a period of five years upto a ceiling of the total investment made in fixed assets. Existing industries in the most backward taluks and in the three State Industries Promotion Corporation of Tamil Nadu (SIPCOT) complexes, undertaking expansion / diversification are also eligible for full waiver of sales tax dues for a period of five years subject to a ceiling of the total investment in fixed assets under expansion / diversification.

4. With a view to encourage more industries in Tamil Nadu, the Government direct that the following concessions also be made available to the industries:
(a) For the industries to be started in the 75 backward taluks i.e. Other than the 30 most backward taluks, from among the 105 backward taluks, and in the industrial estates developed by any of the Government agencies including Madras Export Processing Zone, Madras Metropolitan Development Authority, the scheme of interest free sales tax loan/deferral ordered in the Government order first, third and fourth read above is modified as follows:
(i) For the existing units undertaking expansion or diversification, deferral of sales tax will be given for nine years and the total amount thus given shall not exceed 80% of the additional investment made in fixed assets.
(ii) For the new units, the total amount of deferral of sales tax will be given for nine years to the full extent of the total investment made in fixed assets.
(b) The interest free sales tax deferral scheme is extended to the expansion (Part-I) as well as to the starting of new industries (Part-II) in the other areas also, where this scheme was not in vogue hitherto. The deferral of sales tax for the industries in these area will be for five years subject to a maximum of 60% of the total investment made in fixed assets in the case of new industries and 50% of the additional investment in fixed assets made in the case of expansion/diversification, of the existing industries.
(c) As a gesture to the industries to be set up in any part of Tamil Nadu with an invest in fixed assets of more than Rs.50 crores, a special incentive of deferral of sales tax for a period of 9 years to the extent of total investment made in fixed assets will be given. This deferral concession will also be available to the existing industries going in for expansion / diversification with an additional investment in fixed assets for more than Rs.50 crores.

5. The sales tax deferral / waiver of expansion / diversification ordered in paras 3-4 above is subject to the sales tax payable on products manufactured by the capacity created by expansion / diversification units only.

6. The industries in the Most backward taluks and in the SIPCOT Complexes at Cuddalore, Manamadurai and Pudukottai can opt either for the full waiver of sales tax for a period of five years ordered in para 3 above or for the deferral of sales tax for nine years as applicable to the industries in the backward taluks ordered in para 4(a) above. The option should be exercised along with the application to be submitted to the authority for issuing eligibility certificate. The option once exercised and accepted will be final and cannot be changed.

7. The application for interest free sales tax deferral should be filed before the General Manager, District Industries Centre concerned in the case of small scale industries and before SIPCOT in the case of medium and major industries before the commencement of commercial production.

8. The above scheme will be applicable to small, medium and major industries as the case may be. The deferral / waiver period will commence from the date of commencement of commercial production after the completion of the envisaged project. Such commencement shall be on or after the date of issue of this order, for eligible units.

9. The General Manager, District Industries Centre and SIPCOT will be the competent authorities to issue eligible certificates in respect to Small Scale industries and major and medium industries respectively. The respective sales tax assessing authority will assess the sales tax liability of the units for each year. The sales tax authorities concerned, based on the assessments will raise demands for deferral of sales tax without interest or waiver of sales tax after commencement of production by the units. But the tax payable for the year will be deferred / waived within the overall ceiling for which the eligibility certificate issued by the authority. The deferred instalments shall be payable by the assessed units after the completion of the period of deferral together with the sales tax of the current year, without any interest thereon. In the case the units avails the complete deferral / waiver benefit before the completion of specified deferment period of 5 years or 9 years as the case may be, the unit has to pay the normal sales tax immediately after the date of full availment of eligible deferral amount. The assessee of the unit for which the sales tax has been waived will start paying the current sales tax dues after the completion of the waiver period or immediately after the full availment of eligible waiver amount, whichever is earlier. However, the deferred amount of sales tax for 5 years or 9 years as the case may be, has to be paid after the completion of the deferral period along with the current dues, i.e. In the case of deferral of 9 years the amount deferred in the first year being payable along with the sales tax due in the 10th year, the amount deferred in the second year being payable along with the sales tax dues in the 11th year and so on.

10. All eligible units which have commenced production before the date of issue of this order will be eligible for interest free sales tax loan / deferral, as per the order existing on the date of commencement of production. Units which have availed interest free sales tax loan under existing schemes, may opt for the deferral facility to the extent of uncompleted period and unutilised amount of the earlier scheme.

11. The original project in a taluk may go in for expansion / diversification in the same taluk where the original project is located or in any other taluk and avail the interest free sales tax deferral / waiver concession. However, this concession would be granted for one expansion / diversification only if carried out in the same taluk where the original project is located.

12. Second-hand machinery will not be part of the investment eligible to the computation of deferral or waiver of sales tax.

13. This order modifies all the previous orders available on the subject matter, to the extent to which the scheme has been covered by this order.

14. This order issued with the concurrence of Commercial Taxes and Religious Endowment and Finance Department vide their U.O.No.20626/B2-90-1 dated 2.5.1990 and U.O.No.2674/F9/P/90, dated 7.5.1990 respectively.
/By order of the Governor/
M.M.Rajendran,
Chief Secretary to Government"

(emphasis supplied)

2.2. By proceedings in G.O.P.No.92, Commercial Taxes and Religious Endowments, dated 22.2.1991, in exercise of powers conferred under section 17(4) of the Tamil Nadu General Sales Tax Act, 1959 (for brevity, the "TNGST Act"), Government of Tamil Nadu granted remission of sales tax payable by new industries, set up in 30 most backward taluks specified in the annexure thereunder and in three industrial complexes of SIPCOT at Pudukottai, Cuddalore and Manamadurai, on the sale of the products manufactured by the units for a period of five years from the date of commencement of production on or after 14.5.1990 upto a ceiling of total investment made in fixed assets after deducting the quantum of tax under the Central Sales Tax Act (in brief 'CST Act') subject to the production of eligibility certificate issued by the General Manager, District Industries Centre in the case of small scale industries and by the SIPCOT in the case of medium and major industries.

2.3. In the same G.O.P.No.92, Commercial Taxes and Religious Endowments, dated 22.2.1991, in respect of the existing industries in the abovesaid most backward taluks and in three industrial complexes, the Government granted remission of sales tax on the sale of products manufactured by the capacity created by expansion/ diversification only for a period of five years from the date of commencement of production on or after 14.5.1990 subject to the ceiling of the total investment made in fixed assets under expansion/diversification subject to the production of eligibility certificate issued by the General Manager, District Industries Centre in the case of small scale industries and by the SIPCOT in the case of medium and major industries and it is made clear that such remission shall be granted for only one expansion or diversification of the existing unit, if carried out in the same taluk where the original project is located.

2.4. Similarly, by the same G.O.P.No.92, Commercial Taxes and Religious Endowments, dated 22.2.1991, the Government granted deferment of payment of sales tax payable by new industries in 75 backward taluks annexed thereto on the sale of products manufactured by the units for a period of nine years from the date of commencement of production on or after 14.5.1990 upto a ceiling of total investment made in fixed assets, after deducting the quantum of tax under CST Act for the same period (i) subject to the production of eligibility certificate issued by the General Manager, District Industries Centre in the case of small scale industries and by the SIPCOT in the case of medium and major industries; and (ii) subject to the condition that the tax deferred shall be paid after the completion of deferral period along with the tax assessed for that year.

2.5. The Government, under the same G.O.P.No.92, Commercial Taxes and Religious Endowments, dated 22.2.1991, also granted deferment of payment of sales tax payable by the existing industries in abovesaid 75 backward taluks on the sale of products manufactured by the capacity created by expansion/diversification only for a period of nine years from the date of commencement of production on or after 14.5.1990 upto a ceiling of 80% of additional investment made in fixed assets, after deducting the quantum of tax under CST Act, for the same period subject to the production of eligibility certificate issued by the General Manager, District Industries Centre in the case of small scale industries and by the SIPCOT in the case of medium and major industries and on condition that the tax so deferred shall be paid after the completion of the deferral period along with the tax assessed for that year and that the deferral of sales tax shall be eligible for only one expansion/diversification of the existing unit, if carried out in the same taluk where the original project is located.

2.6. The Government also, by the same G.O.P.No.92, Commercial Taxes and Religious Endowments, dated 22.2.1991, granted deferment of payment of sales tax payable by new or existing industries within the State of Tamil Nadu other than 30 most backward or 75 backward taluks notified by the Government or the abovesaid industrial complexes on the sale of products manufactured by these

units for a period of nine years from the date of commencement of production on or after 14.5.1990 upto a ceiling of total investment or additional investment made in fixed assets after deducting the quantum of tax under CST Act for the same period subject to the production of eligibility certificate issued by the General Manager, District Industries Centre in the case of small scale industries and by the SIPCOT in the case of medium and major industries and on condition that the tax so deferred shall be paid after the completion of the deferral period along with the tax assessed for that year and that the deferral of sales tax shall be eligible for only one expansion/diversification of the existing unit, if carried out in the same taluk where the original project is located.

2.7. Thereafter, by notification in G.O.P.No.396, Commercial Taxes and Religious Endowments, dated 10.9.1991, the Government in exercise of the powers conferred by sub-section (1) of section 17A of the TNGST Act granted deferral of payment of tax payable by any industry having an investment of Rs.100 crores and above to be set up anywhere in Tamil Nadu on the sale of the products manufactured by the industry for a period of twelve years from the date of commencement of production on or after 18.7.1991 up to a ceiling of 100 per cent of the value of fixed assets after deducting the quantum of tax under the CST Act for the same period subject to the production of eligibility certificate issued by the SIPCOT and on condition that the industry shall not have availed the remission of sales tax under sub-section (4) of section 17 of the TNGST Act.

2.8. In G.O.Ms.No.376, Commercial Taxes and Religious Endowments, dated 27.10.1992, in exercise of powers conferred by clause (a) of sub-section (5) of section 8 and sub-section 2 of section 9 of the CST Act, the Government extended the benefits of remission/ deferral of tax payable under the CST Act, as similar to G.O.P.No.92, Commercial Taxes and Religious Endowments, dated 22.2.1991 to the new industries as well as existing industries, on the same conditions prescribed under G.O.P.No.92, Commercial Taxes and Religious Endowments, dated 22.2.1991.

2.9. Independent of G.O.Ms.No.500, Industries (MIG-II) Department, dated 14.5.1990 which applies to industries set up anywhere in Tamil Nadu and entitles such industries to waiver or deferral of sales tax, the Government of Tamil Nadu by G.O.Ms.No.43, Industries (MIG-II) Department, dated 13.12.1992 introduced special incentives for mega investments in the State and liberalised the incentives to major industries subject to satisfaction of the conditions prescribed thereunder.

2.10. Thereafter, the Government by G.O.Ms.No.90, Commercial Taxes and Religious Endowments Department, dated 18.3.1994, in order to remove the loopholes in the operation of Sales-tax Deferral Scheme referred to above, issued the following directions:

"(i) Deferral scheme is applicable only to products manufactured by a particular industry. Therefore, a provision may be made in the eligibility certificate to the effect that if any industry indulges in malpractices of trade being disguised as manufactured goods, then the deferral scheme could be foreclosed by Commercial Taxes Department and the tax assessed for all the years covered by the scheme be recovered in one lumpsum after issue of show cause notice.

(ii) In the IFST loan scheme there was a condition to the effect that if the unit availing the loan stopped normal production for a period exceeding six continuous months except in condition of force majeure, the entire outstanding loan will become recoverable in one lumpsum. Similar condition may be incorporated in the agreement form in respect of deferral of sales tax.

(iii) It may be prescribed that the Assessing Officers must keep a close watch over the performance of the industry and foreclose the scheme and enforce the recovery of the tax assessed for all the years covered by the scheme if the monthly returns or check of accounts during assessment or otherwise show that the industry has stopped production in excess of the permitted period.

(iv) Special arrangements may be made in the offices of the Commissioner of Commercial Taxes and Deputy Commissioners to ensure that the relief given in each case is entirely in terms of the Eligibility Certificate issued, that the terms and conditions are complied with and recoveries when due, strictly enforced.

(v) The benefit of deferral of sales tax may be restricted to diversification only where the end products can be distinguished from the products of the old unit."
(emphasis supplied)

2.11. Then, the Government, by G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994, in order to protect the revenue and also to increase the production level of industries which propose to avail the concession of deferral of sales tax, imposed certain conditions and issued directions that are required to be complied with by the expansion / diversification units for claiming sales tax benefits and the G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994, reads as follows:
"GOVERNMENT OF TAMIL NADU
ABSTRACT
Tamil Nadu General Sales Tax Act, 1959 – Deferral of Sales Tax Incremental turnover eligible for deferral – condition imposed on M/s.Ashok Leyland Limited – Extension to other Industries - orders – issued.

COMMERCIAL TAXES AND RELIGIOUS ENDOWMENTS DEPARTMENT

G.O.Ms.No.119 Dated: 13.4.1994

Read:
1. G.O.Ms.No.464, Industries Department, dated 14.9.1992
2. Letter Ms.No.113, Industries department dated 15.3.1993.
3. From the Special Commissioner & Commissioner of Commercial Taxes D.O.Lr.No.03/73787/93, dated 22.7.1993.

ORDER:

At present sales tax deferral is allowed for 10, 12 years to the major industries for their expansion and diversification units based on the investment made by them in such expansion or, diversification.

2. In the G.O. first read above, Tvl. Ashok Leyland Limited were granted incentive of sales tax deferral for a period of 10 years in respect of their project for manufacture of HINO/IVECO engines and expansion of capacity of existing vehicle assembly units at Ennore and Hosur. They were also granted sales tax deferral for 14 years in respect of their programme for introduction of new range of vehicles with State of the art technology to be obtained from M/s.IVECO at an estimated cost of Rs.438 crores. Subsequently, the Special Commissioner and Commissioner of Commercial Taxes, Madras raised a presumption that the company will be eligible for deferral only in an year when the annual actual production of a particular unit exceeds the benchmark figure for production in their units, as specified by SIPCOT (as a corollary, naturally the company would not be eligible for deferral where the actual production is lower). In the connection, the Government after detailed examination have issued clarifications in their letter Ms.second read above by fixing the Base

Production volume and Base sales volume as eligibility for claiming deferral of sales tax by M/s.Ashok Leyland Limited for their expansion schemes. As these clauses protect the past revenue of the Commercial Taxes Department before the expansion, it was considered that the above conditions, i.e., fixing of base production volume and base sales volume may be insisted in all industries seeking the benefits of deferral of sales tax to their taking up of expansion projects. The Special Commissioner and Commissioner of Commercial Taxes, Madras has now reported that while issuing Eligibility certificate for expansion cases, SIPCOT alone adds a clause that past revenue before the expansion should be protected as other organisations, particularly District Industries Centre do not seem to be aware of this system and issue very open ended eligibility certificates, which often causes problems the Commercial Taxes Department, especially when some industries tend to take on more and more of the manufacture and same in the expanded units and decrease it in the old units. Accordingly, Taxes for the reason stated above, has recommended that the principles laid down for the Ashok Leyland Limited referred to in Government Letter Ms.No.113, Industries dated 15.3.1993 may be adopted as a general principle for all expansion cases and therefore he has suggested certain conditions.

3. The Government after careful examination, have decided to accept the suggestions of the Special Commissioner and Commissioner of Commercial Taxes as they protect the Revenue and also help to increase the production level of the industries availing the concession. Accordingly, the Government direct that -

i) The Industry will be eligible for sales tax deferral only if in a financial year production exceeds the base production volume which is the highest annual production in the 3 years prior to expansion.

ii) When the actual production in the industry in any financial year exceeds the base production volume, the industry would be eligible for deferral of sales tax for sales made in that year in excess of the base sales volume under Tamil Nadu General Sales Tax, which is the highest of the actual annual sales in the last 3 years prior to expansion.

iii) The above conditions are applicable in cases where expansion units is a separate unit located elsewhere or a part of the existing plant.

iv) The specification of base production/sales volumes are applicable even in the case of allegedly new unit having been started by the same management or ownership or where the substantial controlling capital is put in by the same ground of companies.

v) The base production volume and the base sales volume will have to be worked out and incorporated in the eligibility certificates at the time of issue by SIPCOT and District Industries Centres."

/By order of the Governor/

sd/-
Secretary to Government"

(emphasis supplied)

III. THE RELEVANT FACTS IN BRIEF

PART □ A

(M/s.India Cements Deferral of Sales Tax Cases)

3.1. For the purpose of convenience, the petitioner in W.P.Nos.13697 and 13698 of 2002 is referred by its name, viz., M/s.India Cements and the cases are referred to as M/s.India Cements Deferral of Sales Tax Cases.

3.2. The brief facts of the case, sans unnecessary details, are as under:

3.3. M/s.India Cements is a registered company, engaged in the manufacture and marketing of cement in the States of Tamil Nadu and Andhra Pradesh and therefore, a dealer in Cement within the definition of "dealer" as defined under Section 2(g) of the TNGST Act.

3.4. M/s.India Cements, which is already having existing units of manufacturing cement at Sankari and Sankar Nagar, by letters dated 13.3.1996, 4.3.1997 and 24.9.1997 proposed to set up an expanded unit at Dalavoi village, Sendurai taluk to avail the benefit of Sales tax Deferral Scheme under G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994 and addressed to the SIPCOT for the issue of eligibility certificate and made an application to that effect in prescribed form.

3.5. The SIPCOT issued an Eligibility Certificate under Interest-free Sales Tax Deferral Scheme/Expansion on 13.2.1998 which reads as follows:
"STATE INDUSTRIES PROMOTION CORPORATION OF TAMIL NADU LIMITED, 19-A, RUKMANI LAKSHMIPATHY ROAD, EGMORE, CHENNAI 600 006

ELIGIBILITY CERTIFICATE UNDER IFST
DEFERRAL SCHEME -EXPN

Eligibility certificate No. :4/XII/D/E.
Date of issue :13.2.1998

This E.C. is hereby granted to M/s.The India Cements Ltd., located at Dalavoi Village, Sendurai Taluk, Perambalur Dist., manufacturing cement under the new IFST Deferral Scheme of the Government of Tamil Nadu.

2. Subject to the conditions mentioned in the sales tax deferral scheme and those mentioned hereinafter, the holder of this certificate shall be entitled to the benefit of IFST Deferral Scheme for TWELVE YEARS as per G.O.Ms.No.500, Indus.(MIG.II) Dept., dated 14.5.1990 and subsequent amendments issued thereon including G.O.Ps.No.92, Comml. Taxes & Religious Endowment Department dated 22.2.1991 and G.O.Ms.No.119, Comml. Taxes & Religious Endowment Department dated 13.4.1994 and G.O.Ms.No.43, Inds. (MIG.2) Department dated 13.2.1992.

3. Based on the above, the holder of this E.C. will be eligible for deferral of sales tax not exceeding Rs.205.13 crores (Rupees Two hundred and five crores and thirteen lakhs only) interest free for TWELVE YEARS from the month in which the holder's unit commenced its commercial production i.e. From 1.6.1997 to 31.5.2009.

4. The actual shall however, be the least of the amounts mentioned in 4.1. and 4.2. below:
4.1 (a). Actual sales tax liability on account of General Sales Tax, Central Sales Tax, Additional Sales Tax, Surcharge and Additional Surcharge liability accruing the favour of Government during the period of deferral on the sale of finished goods manufactured by the unit.
4.2. 100% of the value of initial gross fixed assets i.e. Rs.205.13 crores (Rupees Two hundred and

five crores and thirteen lakhs only).

5. CONDITIONS:
5.1. The sales tax deferred will be repaid as follows:
DEFERRAL PERIOD FINANCIAL YEAR OF REPAYMENT
1.6.1997-31.3.1998 1.6.2009-31.3.2010
1.4.1998-31.3.1999 1.4.2010-31.3.2011
1.4.1999-31.3.2000 1.4.2011-31.3.2012
1.4.2000-31.3.2001 1.4.2012-31.3.2013
1.4.2001-31.3.2002 1.4.2013-31.3.2014
1.4.2002-31.3.2003 1.4.2014-31.3.2015
1.4.2003-31.3.2004 1.4.2015-31.3.2016
1.4.2004-31.3.2005 1.4.2016-31.3.2017
1.4.2005-31.3.2006 1.4.2017-31.3.2018
1.4.2006-31.3.2007 1.4.2018-31.3.2019
1.4.2007-31.3.2008 1.4.2019-31.3.2020
1.4.2008-31.3.2009 1.4.2020-31.3.2021
1.4.2009-31.5.2009 1.4.2021-31.5.2021

5.2. The unit shall enter into an agreement with the Assistant Commissioner (Commercial Taxes) concerned as per terms and conditions stipulated by that Department.
5.3. The company is eligible for deferral of sales tax only on the increased volume of production/sale. For the purpose of determining the increased volume of production, the base figure would be the highest of the volume of production/sale in the company in any one of the year during the last 3 years. Till reaching the volume of production/sale specified earlier the company would continue to pay tax and any liability in excess of the production/sale specified above alone will be eligible for deferment. The highest production/sales achieved by the company prior to the proposed expansion/ diversification in the last three years is:
Portland cement production in lakh tonnes - 25.86 (95-96) / S.T.O. - Rs.72882 lakhs (1996-97).

Production details

Cement plant Location Qty. in lakh
tonnes

Sankar Nagar Tamil Nadu 10.60
Sankari Durg Tamil Nadu 6.09
Chilamkur A.P. 9.21
25.86

Sales turnover details:

Cement plant Sales within Sales outside Rs.in lakh
location Tamilnadu Tamilnadu Total

Sankar nagar-
Tamil Nadu 10926 19970 30896
Sankari Durg-
Tamil Nadu 7731 8644 16375

Chilamkur □
A.P. 13326 11923 25249
Add price 31983 40537 72520
Difference 362 -- 362
32345 40537 72882

5.4. The subject company has furnished the production/turnover details of its group companies vide its Lr.dt. 24.9.1997. The highest production/ turnover of the Group company's is given below:

Name & Location Product Prodn.(Kgs) Sales T.O. /Rs.in lakhs Year

-NIL-

6. The deferral scheme will be applicable to the unit/ company only as long as it manufactures products for which the E.C. has been issued. If the unit/ company fails to manufacture the product for which the E.C. has been issued or manufactures any other goods under the guise of the products of which the certificate has been issued or if the Comml. Tax Department is of the opinion that the unit/company is not manufacturing the product for which the E.C. has been issued, the E.C. issued shall stand cancelled. The Comml. Tax Department shall have the right to demand and collect the tax assessed for all the years covered by the scheme and the unit/company is liable to pay the same in one lump sum.
7. Violation of any of the conditions in the Eligibility Certificate and the connected Government Orders will result in withdrawal of deferral entirely.
Sd/xxx
for MANAGING DIRECTOR"

Sd/xxx
for MANAGING DIRECTOR"

(emphasis supplied)

3.6. The SIPCOT, by letter dated 13.8.1999, issued an amendment to the eligibility certificate to the effect that M/s.India Cements would be eligible for deferral of sales tax to the tune of Rs.270.21 crores instead of Rs.205.13 crores, as referred to in paras 3 and 4.2 of the Eligibility Certificate dated 13.2.1998.

3.7. Pursuant to the said Eligibility Certificate dated 13.2.1998, as amended by letter dated 13.8.1999, and in compliance of the clause 5.2 thereof, M/s.India Cements entered into an agreement with the Zonal Assistant Commissioner, Commercial Taxes on 12.4.2000 specifically agreeing to comply with BPV/BSV so that it will be eligible for the deferral of sales tax to the tune of Rs.270.21 crores. The agreement dated 12.4.2000 reads as under:

"DEED OF AGREEMENT FOR DEEMED PAYMENT OF DEFERED SALES TAX □ DEEMED RELOANING AND RECOVERY OF LOAN

This deed of agreement is made at Chennai on this Twelfth day of April Two Thousand between the Government of Tamil Nadu, represented by the Territorial Assistant Commissioner of Commercial Taxes represented by Sri.S.Paranthaman, on the first part; and M/s.The India Cements Ltd., having their registered Office at Dhun Building, 827, Anna Salai, Chennai 600 002 represented by Sri.N.Srinivasan, Managing Director, on the second part; both parties herein shall include their

respective successors, legal representatives, executors, administrators, nominees, assignees, etc.

WHEREAS M/s.The India Cements Ltd. have established a New Industrial Unit at Dalavoi village, Sendurai taluk, Perambalur Dist., a notified Most backward Block of Senthurai and have commenced production of their products at the new unit.

WHEREAS the Government have by their G.O.P.No.92 Commercial Taxes and Religious Endowments Departments dated 22.02.1991, directed that deferral of sales tax will be given for new industries as well as existing industries while undertaking expansion/diversification of units for a period of 12 years and the total amount thus given deferral shall not exceed the total investments made in fixed assets in each new industries or in such new unit and under expansion /diversification of the amount specified in the eligibility certificate issued by the General Manager, District Industries Centre/SIPCOT whichever is lower, and whereas Government have further directed in G.O.Ms.No.48, Commercial Taxes and Religious Endowment, dated 11.2.1994 that the amount of sales tax or purchase tax deferred shall be treated as deemed to have been paid on condition that an identical amount is treated as Government loan extended to the assessee, which shall be payable to the Government by the assessee after the completion of the period of deferral month to corresponding month without any interest, along with the sales tax payable for the current year.

WHEREAS The India Cements Limited, have applied, for deferral of tax (the expression tax wherever it occurs in this agreement shall include sales tax, surcharge, additional surcharge, additional sales tax and Central Sales Tax) to the party to the first part and have also produced the Eligibility Certificate issued by the General Manager, District Industries Centre/SIPCOT.

NOW THEREFORE IT IS AGREED between the parties as under:
1. The Sales Tax due on the sale of the products manufactured by them in their premises shall be deemed to have been paid to the assessing authority and an identical amount shall be treated as Government loan.
a) In the case of new industries, it shall be for the full tax subject to ceiling specified in Eligibility Certificate.
b) In the case of expansion/diversification:
i) the company is eligible for deferral of sales tax on the increased volume of production. For the purpose of determining the increased volume of production, the base figure shall be the highest of the volume of production/sales in the company in any one of the year during the last 3 years period preceding the date of commencement of deferral.
ii) the company has to go on paying the tax to the level of base volume of production/sales and once it reaches this level, then any further tax liability will be eligible for deferral of sales tax.
iii) based on the above, the holder of this E.C. will be eligible for deferral of sales tax not exceeding Rs.270.21 Crores (Rupees Two Hundred and Seventy Crores and Twenty one Lakhs only) interest free for TWELVE YEARS from the month in which the holder's unit commenced its commercial production i.e. from 1.7.1997 to 31.5.2009.

2. The total amount of tax to be deferred shall not exceed the total investment made in fixed assets under expansion/diversification or the amount specified in the Eligibility Certificate issued by the District Industries Centre/SIPCOT, whichever is lower.

3. The party of the second part agrees to repay the Government loan in instalments:
DEFERRAL PERIOD FINANCIAL YEAR OF REPAYMENT
1.6.1997-31.3.1998 1.6.2009-31.3.2010
1.4.1998-31.3.1999 1.4.2010-31.3.2011
1.4.1999-31.3.2000 1.4.2011-31.3.2012

1.4.2000-31.3.2001 1.4.2012-31.3.2013
1.4.2001-31.3.2002 1.4.2013-31.3.2014
1.4.2002-31.3.2003 1.4.2014-31.3.2015
1.4.2003-31.3.2004 1.4.2015-31.3.2016
1.4.2004-31.3.2005 1.4.2016-31.3.2017
1.4.2005-31.3.2006 1.4.2017-31.3.2018
1.4.2006-31.3.2007 1.4.2018-31.3.2019
1.4.2007-31.3.2008 1.4.2019-31.3.2020
1.4.2008-31.3.2009 1.4.2020-31.3.2021
1.4.2009-31.5.2009 1.4.2021-31.5.2021"

The first year's loan in the thirteenth year along with tax payable for the corresponding months of (on or before 20th of the month) that year, the second year's loan in the fourteenth year April month for April along with tax payable for the corresponding months of that year, and so on as per G.O.P.No.92, Commercial Taxes and Religious Endowments Department dated 22.01.1991 read with G.O.Ms.No.48, Commercial Taxes and Religious Endowments Department, dated 11.2.1994. In case of default in payment of Government loan, the party of the second part undertake that:

a)in the case of partnership firm, the movable and immovable properties of the partners;
b) in the case of proprietary concern,the movable and immovable properties of the proprietors; and
c) in the case of Limited Companies, the movable and immovable properties of the company shall be liable to be attached/proceeded towards the realisation of outstanding Government loan under Revenue Recovery Act together with interest at 24% per annum (simple interest) calculated from the due date for repayment of loan. The term movable shall include cash/shares/debentures/ bank balance, etc.

4. The party of the second part shall not alienate/dispose/encumber/lease out of the said fixed assets until the Government loan is fully repaid nor shall it remove the fixed assets from the unit's premises without the express prior permission from the party of the first part who, in turn, shall obtain appropriate orders from the Government for the same.

5. The party of the second part shall insure the fixed assets at a value not less than the value certified by the District Industries Centre, SIPCOT and keep the insurance policies alive by renewing it every year until the Government loan is fully repaid. The insurance policy/renewed policy shall be produced for inspection to the party of the first part before 30th of June every year.

6. The party of second part shall maintain the fixed assets in good condition so that the market value of the assets is maintained from time to time.

7. The party of second part shall furnish to the party of first part the audited balance sheet and profit and loss account certified by the chartered accountant within six months of the close of the financial year.

8. Tax, etc. or penalty levied/leviable on taxable turnover suppressions (for the purpose of this clause the term 'turnover suppressions' means the taxable turnovers not shown or not declared as such in the monthly returns filed by the party of the second part) are not eligible for the loan scheme.

9. If the new/expanded/diversification unit availing the loan scheme stopped normal production for a continuous period of 6 months or more except in conditions of 'force majeure' the entire Government loan outstanding will be recovered in one lumpsum from the party of the second part and the loan scheme concession will cease thereafter.

10 (a) Party of the second part certify that:

i)Promoters/partners/Directors have not made any default to commercial tax department.
ii) that they have not wound up any firm/company for which they have availed sales tax concession in the past and,
iii) that they have not transferred the fixed assets of any concern/firm/company for which they have availed sales tax concessions previously to any other person.

b) In the case of any specific proof to the effect that the promoter/partner/director of the firm or company has grossly and habitually defaulted payment of tax or attempted to derail the tax recovery proceedings by changing the constitution of the existing firm/company or by transferring of fixed assets to another etc. While doing business now or earlier in any other name, Commercial Tax Department has full rights to cancel the proceedings and agreement that has been entered under IFST deferral/waiver scheme and to recall the sales tax already deferred in one lumpsum from the beneficiary.

11) In case of default of any of the conditions mentioned in paras 3,4,5,6,7,8,9,10(a) and 10(b) above, the deferral thus granted shall be cancelled for the entire period for which the same was granted.

In default of repayment of Government loan or cancellation the deferral facility for violation of any of the conditions mentioned in paras 3,4,5,6,7,8,9,10(a) and 10(b) above, such Government loan, tax and interest due thereon, shall be recoverable in such manner as specified under Revenue Recovery Act for the loan, and section 24(2) of the TNGST Act for the tax, and the amount is also liable for 24% interest per annum.

WITNESSTH where of Government of Tamil Nadu represents Sri S.Paranthaman, Assistant Commissioner of Commercial Taxes, Greams Road, Chennai 600 006 and Thiru N.Srinivasan, Managing Director represents M/s.The India Cements Limited respectively have set their hands on the day, month, year first above written".
(emphasis supplied)

4.1. Pursuant to the above Government Orders and the Eligibility Certificate dated 13.2.1998, as amended by letter dated 13.8.1999 issued by the SIPCOT in favour of M/s.India Cements and the agreement entered into between M/s.India Cements and the Zonal Assistant Commissioner, Commercial Taxes dated 12.4.2000, the Assistant Commissioner of Commercial Taxes in proceedings dated 28.4.2000 made it clear that M/s.India Cements shall pay the tax due under TNGST Act and CST Act as stated hereunder:

DEFERRAL PERIOD FINANCIAL YEAR OF REPAYMENT
1.6.1997-31.3.1998 1.6.2009-31.3.2010
1.4.1998-31.3.1999 1.4.2010-31.3.2011
1.4.1999-31.3.2000 1.4.2011-31.3.2012
1.4.2000-31.3.2001 1.4.2012-31.3.2013
1.4.2001-31.3.2002 1.4.2013-31.3.2014
1.4.2002-31.3.2003 1.4.2014-31.3.2015
1.4.2003-31.3.2004 1.4.2015-31.3.2016
1.4.2004-31.3.2005 1.4.2016-31.3.2017
1.4.2005-31.3.2006 1.4.2017-31.3.2018
1.4.2006-31.3.2007 1.4.2018-31.3.2019
1.4.2007-31.3.2008 1.4.2019-31.3.2020

1.4.2008-31.3.2009 1.4.2020-31.3.2021
1.4.2009-31.5.2009 1.4.2021-31.5.2021

4.2. In the said proceedings dated 28.4.2000 it is also stated that the above amount deferred Rs.270.21 Crores (Rupees Two hundred and seventy Crores and twenty one lakhs only) is subject to the following conditions apart from the other conditions mentioned in the Eligibility Certificate dated 13.2.1998 and in addition to the conditions mentioned in the agreement dated 12.4.2000. It is also emphasised that the deferral scheme will be applicable to the company only as long as it manufactures products for which the Eligibility Certificate dated 13.2.1998 has been issued. If the company fails to manufacture the product for which the Eligibility Certificate dated 13.2.1998 has been issued or manufactures any other goods under the guise of the products for which the certificate has been issued or if the Commercial Taxes Department is of the opinion that the company is not manufacturing the product for which the Eligibility Certificate dated 13.2.1998 has been issued, the Eligibility Certificate dated 13.2.1998 issued shall stand cancelled and the Commercial Taxes Department shall have the right to demand and collect the tax assessed for all the years covered by the scheme and the company is liable to pay the same in one lumpsum.

4.3. M/s.India Cements was remitting the sales tax up to the level it reached the base sale volume, viz., the highest of the actual annual sales in the last three years prior to the expansion, stating that they also reached, in the financial year, base production volume, viz., the highest production in the last three years prior to the expansion, and submitted its return claiming the deferral of tax on the sale in excess of the base sales volume.

4.4. But, the Assistant Commissioner of Commercial Taxes, referring to G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994, the qualifications prescribed in the Eligibility Certificate dated 13.2.1998, as amended by letter dated 13.8.1999 and the terms and conditions of the agreement dated 12.4.2000 entered into between M/s.India Cements and the Zonal Assistant Commissioner, Commercial Taxes, issued a notice dated 19.3.2002 informing M/s.India Cements that once the BSV is reached, then the eligibility for availment of deferral under the Eligibility Certificate dated 13.2.1998 would be available only for the unit at Dalavoi and the deferral could not be stretched to include the production of other units and accordingly, demanded M/s.India Cements to pay a sum of Rs.5322.14 lakhs which had been availed in excess as deferral of sales tax, as detailed below:
Year Deferral of Taxes availed Excess of
Taxes as deferral for taxes availed
eligible all units as deferral
(for expansion
unit only)

(Rupees in Lakhs)

1997-98 692.52 1146.00 453.48

1998-99 2131.00 3177.00 1046.00

1999-00 2750.00 4057.00 1307.00

2000-01 2808.00 4375.00 1567.00

2001-02 1669.34 2618.00 948.66

TOTAL 5322.14

4.5. In the above said notice dated 19.3.2002, it was also informed that M/s.India Cements could avail deferral of sales tax after reaching the Base Sales Volume/Base Production Volume for all the units whichever is earlier and then, M/s.India Cements could avail deferral for expansion unit at Dalavoi only.

4.6. The Assistant Commissioner issued an erratum by notice dated 21.3.2002 to the earlier notice dated 19.3.2002, to the effect that the words 'units whichever is earlier and then they can avail deferral for expansion unit' should be read as 'units whichever is later and then they can avail deferral for expansion unit'.

4.7. In response to the notice dated 19.3.2002, M/s.India Cements sent a letter to the Assistant Commissioner, Commercial Taxes on 26.3.2002, submitting that:
(i) G.O.Ms.No.119 dated 13.4.1994 cannot be read as completely nullifying the purpose and purport and effect of G.O.P.No.92, Commercial Taxes & Religious Endowment Department dated 22.02.1991;

(ii) The aim of G.O.Ms.No.119 dated 13.4.1994 was to ensure that the entrepreneur maintains the tax payment obligation prior to the new industry so that only incremental sale volume is entitled to deferral. By construing the new industry at Dalavoi as an expansion (which itself is artificial) the G.O.Ms.No.119 dated 13.4.1994 would purport to say that the industry (consisting of the base production infrastructure + expansion infrastructure) pays tax upto the base sale volume and enjoys deferral thereafter; and

(iii) the new industry, which is a separate industrial undertaking, with the sole investment infrastructure utilities, Management and work force already determined, had suffered by treating this as an expansion and even if it were an expansion, logically tax can only be collected to the base sale volume and further sale volume beyond the base volume should be treated as a result of the expansion investment.

4.8. In the meanwhile, consequent to the erratum issued in notice dated 21.3.2002, the Assistant Commissioner issued a revised notice on 22.3.2002 informing that M/s.India Cements availed deferral before it reached the Base Production Volume which is violative of the conditions laid down in the Eligibility Certificate and other Government Orders and M/s.India Cements was therefore liable to pay the excess availment of deferral of sales tax to the tune of Rs.5873.51 lakhs for the period from 1998-99 as detailed below:

(Rs. in lakhs)
1998-1999 Rs.1289.67
1999-2000 Rs.1555.08
2000-2001 Rs.1484.47
2001-2002 Rs.1544.29
Total Rs.5873.51

4.9. In the said revised notice dated 22.3.2002 it is also made clear that the Eligibility Certificate for deferral of sales tax was granted to the unit located at Dalavoi village only as an expansion unit, but M/s.India Cements was availing deferral for the existing units at Sankar Nagar and Sankari also which is not in order and the benefit of deferral of sales tax was given only to the expansion unit and hence, M/s.India Cements should pay the taxes relating to the units at Sankar Nagar and Sankari for the whole year.

5.1. Aggrieved by the said demand notice dated 22.3.2002, M/s.India Cements filed O.P.No.322 of 2002 before the Tamil Nadu Taxation Special Tribunal, the 4th respondent herein, to quash the notice issued by the Assistant Commissioner, Commercial Taxes in Rc.556/2002/A1 dated 22.3.2002 demanding M/s.India Cements to pay a sum of Rs.5873.51 lakhs.

5.2. M/s.India Cements also filed O.P.No.351 of 2002 to declare paragraph 5.3 of the Eligibility Certificate No.4/XII/D/E, dated 13.2.1998, viz. the norms prescribed in the eligibility certificate dated 13.2.1998 for availing deferral of sales tax, as ultra vires the notification No.II(1)/CTRE/158/91 in G.O.P.No.396 dated 10.9.1991 and notification No.II(1)/CTRE/213/92 in G.O.Ms.No.376 dated 27.10.1992 and unenforceable in law.

5.3.1. In both the above Original Petitions, M/s.India Cements contended that Clauses 3(i) and (ii) of G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994 as well as the consequential qualification prescribed in the Eligibility Certificate dated 13.2.1998 in paragraph 5.3 and the corresponding terms and conditions incorporated in the agreement dated 12.4.2000 entered into between M/s.India Cements and the Zonal Assistant Commissioner, Commercial Taxes pursuant to the eligibility certificate, are contrary to the spirit and object of the deferral of sales tax scheme, if the qualification prescribed and the conditions imposed in G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994, the eligibility certificate dated 13.2.1998 as well as the terms and conditions of the agreement dated 12.4.2000 are construed as though the holder of the eligibility certificate would be eligible for the benefit of deferral scheme only if they achieve both BSV/BPV but not otherwise.

5.3.2. It is also contended that the benefit of deferral of sales tax scheme conferred by the statutory notifications issued under Section 17(A) of the TNGST Act and 9(2) of the CST Act cannot be whittled down by the directions issued in G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994, qualifications prescribed in the Eligibility Certificate dated 13.2.1998 and also the conditions imposed in the consequential agreement dated 12.4.2000, referred to above, as they had been issued exercising the power conferred under Article 162 of the Constitution of India, as such executive orders should be subservient to the statutory notifications which gain the status of the authority of law.

5.3.3. In any event, no tax can be levied or collected without any authority of law as per Article 265 of the Constitution of India, more so after granting the benefit of deferral of sales tax scheme by statutory notifications.

5.4.1. On the other hand, the Revenue justified the demand made in the notice dated 22.3.2002 as well as the validity of Para-5.3 of the Eligibility Certificate dated 13.2.1998 on all fours, particularly placing reliance on the decision of Division Bench of this Court dated 5.12.2001 in W.P.No.18199 of 1999 (Madras Cements Ltd. v. State of Tamil Nadu and four others) which arose out of the order of the Taxation Special Tribunal dated 5.11.1999 in O.P.No.1347 and 1348 of 1999 wherein the Tribunal incidentally interpreted Clause 3 (ii) of G.O.Ms.No.119 dated 13.4.1994 as follows: "This Government order makes it clear that even if the production in the industry has reached the Base Production Volume, the industry would be eligible for deferral of sales tax for "sales" made in that year only if they reach the base sale volume. In other words, when the eligibility certificate and the agreement talk of company being eligible for deferral of sales tax only on the increased volume of production/sale, it only means that the eligibility arises for deferral of sales tax in respect of sales made in the year in excess of the Base Sale Volume as per Clause 3(ii) of G.O.Ms.No.119/dated 13.4.1994. The said clause further makes it clear that only when the actual production in the industry in any financial year exceeds the Base Production Volume, the question of eligibility of deferral of sales tax arises. The only interpretation that could be given to the said clause which is

reflected in the eligibility certificate and the agreement entered into by the petitioner is, that both the Base Production Volume and Base Sale Volume should have to be reached before the petitioner could claim deferral of sales tax. In the alternative it means that if the Base Sale Volume had been reached earlier, but the base production volume had not been reached, the petitioner will not be entitled to get the deferral facility. It is only after the Base Production Volume is reached that the right of deferral accrues. Vice-versa if the base Production Volume had been reached later, it is only after the base sale volume is reached that the petitioner will be entitled to get the deferral facility. This in effect means whichever condition is reached later then alone the petitioner gets the right to defer the payment of sales tax."
(emphasis supplied)

5.4.2. According to the Revenue, the only interpretation that can be given to Clause 3(ii) of G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994 is that both Base Production Volume and Base Sales Volume should have to be reached before the industry could claim deferral of sales tax.

5.5. Accepting the arguments of the Revenue, the Tribunal, by common order dated 19.4.2002 held that the scheme contemplates that both Base Production Volume and Base Sales Volume should be achieved before the industry could claim the benefit of deferral of sales tax, that therefore, the industry in whose favour the eligibility certificate was issued would have no right of deferral of sales tax on the date of reaching Base Sales Volume without reaching Base Production Volume or vice versa and that the M/s.India Cements Ltd. having availed the benefit based on the Eligibility Certificate as per the terms and conditions of the consequential agreement dated 12.4.2000 is bound to comply with the qualifications prescribed in the Eligibility Certificate dated 13.2.1998 and also the conditions in the agreement dated 12.4.2000 and cannot go back and contend that Para 5.3 of the Eligibility Certificate and the corresponding terms of the agreement dated 12.4.2000, which required M/s.India Cements Ltd. to achieve the Base Production Volume/Base Sales Volume are ultra vires the deferral of sales tax scheme declared by the Government by statutory notifications. Aggrieved by the same, M/s.India Cements Ltd. has come forward with W.P.No.13697 and 13698 of 2002.

5.6. Pending the above writ petitions, M/s.India Cements Ltd. also filed W.M.P.No.44918 of 2003 to raise additional grounds that the impugned demand, towards excessive deferral sales tax availed by M/s.India Cements Ltd., dated 22.3.2002 is contrary to the circular dated 1.5.2000 issued by the Principal Commissioner and Commissioner of Sales Tax, inasmuch as the first respondent is bound by the circular dated 1.5.2000 issued in exercise of the power conferred under Section 28A of the Act. The relevant portion of the said circular reads as follows:-
"15. As per G.O.Ms.No.119, CT & RE/13.4.1994 as regards expansion cases it was decided that the past revenue shall be protected obtained prior to expansion. The BPV/BSV is fixed on the basis of highest annual production/sales in the 3 years prior to expansion. Thus the Industries will have to pay the taxes due upon the turnover and until the Base Production Volume/Base Sales Volume mentioned in the Eligibility Certificate is achieved. The BPV/BSV shall have to be worked out and incorporated in the Eligibility Certificate by SIPCOT and other district centres as per above Government order. Hence, if the details are not available the particulars of production/sales for prior three years shall be ascertained from the books of the dealers and Eligibility Certificate got amended to incorporate the particulars to avoid any dispute. As per decision of Tamil Nadu Taxation Special Tribunal in O.P.1229/1230/1231/98 dt. 23.11.1998, Mercury Fittings (P) Ltd., it was held that G.O.1998/CTRE/13.4.1992 contemplated the liability to pay tax with reference to Base Production Volume or Base Sales Volume whichever is reached earlier and the liability for deferral is only with reference to Volume of Sales and not with reference to taxes paid on sales for the base year. Thus all Deputy Commissioners and Assistant Commissioners shall thoroughly verify all expansion cases and

satisfy themselves that taxes have been paid until the BPV/BSV has been achieved.
...
Thus, the Assistant Commissioners shall monitor constantly with reference to each dealer availing deferral that there is no violation of any of the conditions of agreement as detailed in this circular and taxes are correctly paid by original and expansion units."
(emphasis supplied)

PART □ B
(M/s.Hindustan Motors Waiver of Sales Tax Cases)

6.1. For the purpose of convenience, the petitioner in W.P.Nos.37042, 40030, 40031 & 44733 of 2002 and 3230, 3231, 3232, 3233, 3234 & 21162 of 2003 is referred by its name, viz., M/s.Hindustan Motors Limited and the cases are referred to as M/s.Hindustan Motors Limited Waiver of Sales Tax Cases.

6.2. The brief facts of the case, so far as required to dispose of these petitions, are as under:

6.3. M/s.Hindustan Motors Ltd. is a registered company. It has two divisions in Tamil Nadu, one at Hosur wherein it manufactures Powershift Transmissions for Earth Moving Equipments. The second division is at Adhigathur where Hindustan Motors Ltd. is manufacturing Lancer Cars in technical collaboration with M/s.Mitsubishi Motor Corporation, Japan. M/s.Hindustan Motors Ltd. set up a completely new unit for the manufacture of Lancer Cars. Earlier, Hindustan Motors Ltd. had another division at Hosur in Tamil Nadu manufacturing earth moving equipments which was subsequently sold to M/s.Caterpillar India Pvt. Ltd. on 9.2.2001 due to financial crunch in India.

6.4. Lured by the Interest free Sales-tax Waiver Scheme, M/s.Hindustan Motors Ltd. made an application to SIPCOT on 29.10.1998 seeking the benefit of waiver of sales tax for car unit and the SIPCOT also granted eligibility certificate on 22.12.1998.

6.5. The eligibility certificate dated 22.12.1998 issued to M/s.Hindustan Motors Ltd., reads as under:
"STATE INDUSTRIES PROMOTION CORPORATION OF TAMIL NADU LIMITED, 19-A, RUKMANI LAKSHMIPATHY ROAD, EGMORE, CHENNAI 600 006

ELIGIBILITY CERTIFICATE UNDER SALES TAX WAIVER SCHEME -EXPN

Eligibility certificate No. :44/E/W/5 yrs.
Date of issue : 22.12.1998

This eligibility certificate is hereby granted to M/s.Hindustan Motors Ltd., located at Adhigathur village, Kadambattur block, Thiruvallur District for the manufacture of passenger Cars under the Sales Tax Waiver Scheme of the Government of Tamil Nadu.

2. Subject to the conditions mentioned in the sales tax waiver scheme and those mentioned hereinafter, the holder of this certificate shall be entitled to the benefit of sales tax waiver for five years as per G.O.Ms.No.500, Indus.(MIG.II) Dept., dated 14.5.1990 and all other Government Orders as are in and may come into force from time to time including G.O.Ps.No.92, Commercial Taxes and Religious Endowment Department dated 22.2.1991 and G.O.Ms.No.119, Commercial Taxes and Religious Endowment Department dated 13.4.1994 and G.O.Ms.No.43, Inds. (MIG.2) Department dated 13.2.1992.

3. Based on the above, the holder of this Eligibility Certificate will be eligible for waiver of sales tax

for a sum not exceeding Rs.8428.94 lakhs (Rupees Eight thousand Four Hundred and Twenty Eight Lakhs and Ninety Four thousand only) under the waiver scheme for the five years from the month in which the holder's unit commenced its commercial production i.e. from 1.10.1998 to 30.9.2003.

4. The actual amount waived shall however, be the least of the amounts mentioned in 4.1. and 4.2. below:
4.1. National sales tax liability on account of Tamil Nadu General Sales Tax, Central Sales Tax, Additional Sales Tax, Surcharge and Additional Surcharge which would have accrued during the period of waiver in favour of Government, but for the waiver on the sales of finished goods manufactured by the unit.
4.2. 100% of the value of initial gross fixed assets i.e. Rs.8428.94 lakhs ((Rupees Eight thousand Four Hundred and Twenty Eight Lakhs and Ninety Four thousand only).

5. The period of operation of sales tax waiver scheme shall be within the period of full availment of the eligible amount for five years period, whichever is earlier. During this period of operation, the company shall not collect sales tax on the sales of its manufactured products.

6. The company shall submit periodical reports to the Commercial Tax Department on the extent of sales and sales tax waiver availed from time to time, during the period of operation as defined in para-5.

7. After expiry of the period of operation, as defined under para-5, the company shall immediately on further sales, start remitting the applicable sales tax to the Commercial Tax Department.

8. The unit shall enter into an agreement with the Assistant Commissioner (Commercial Taxes) concerned on the terms and conditions stipulated by that Department.

9. Sales tax waiver benefit is subject to the sales tax payable on products manufactured by the capacity created by the Expansion scheme at Adhigathur village, Kadambathur Block Thiruvallur District only.

10. The company is eligible for waiver of sales tax only on the increased volume of production/sale. For the purpose of determining the increased volume of production, the base figure would be the highest of the volume of production/sale in the company in anyone of the year during the last 3 years. Till reaching the volume of production/sale specified earlier the company would continue to pay tax and any liability in excess of the production/sale specified above alone will be eligible for deferment (waiver). The highest production/sales achieved by the company units set up in Tamil Nadu prior to the proposed expansion / diversification in the last three year is: Earth moving equipment = 646, Power Shift Transmission Equipment = 1027/ Rs.37593.05 lakhs of 1997-98.

Production Sales T.O.
(in nos.) Rs.(in lakhs)
Earth Moving Equipment
Division at Thiruvallur 646 34143.45
Power Products Division
at Hosur 940 3449.60

1586 37593.05

11. The subject company has furnished the production/turnover details of its Group companies vide its Lr.dated 4.11.98. The highest production/turnover of the Group company's is given below:

Name & Location Product Prodn.(Kgs) Sales Year
T.O. /Rs.in
lakhs/

-NIL-

12. The waiver scheme will be applicable to the unit/company only as long as it manufactures products for which the E.C. has been issued. If the unit/company fails to manufacture the product for which the E.C. has been issued or manufactures any other goods under the guise of the products for which the certificate has been issued or if the Commercial Tax Department, is of the opinion that the unit/company is not manufacturing the products for which the E.C. has been issued, the E.C. issued shall stand cancelled. The Commercial Tax Department shall have the right to demand and collect the tax assessed for all the years covered by the scheme and the unit/company is liable to pay the same in one lump sum.

13. Violation of any of the conditions in the Eligibility Certificate and connected Government Orders will result in withdrawal of waiver entirely.
Sd/xxx
for MANAGING DIRECTOR"

(Emphasis supplied)

6.6. Consequently, M/s.Hindustan Motors Ltd. entered into an agreement with the Assistant Commissioner, Commercial Taxes on 23.3.2000, which reads as follows:

"WAIVER OF SALES TAX
(DEED OF AGREEMENT)

1. Ref.:The Managing Director, SIPCOT Ltd., Chennai Eligibility Certificate No.44/E/W/5 years dt.22.12.98 waiver.

This deed of agreement is made at Chennai on the 23rd day of March, Two Thousand between the Government of Tamil Nadu represented by the Assistant Commissioner of Commercial Taxes Zone VII of the one part;
And Thiru/Tvl HINDUSTAN MOTORS LTD. Having their registered office at 6.B, GSTRoad, Alandur, Chennai 600 016 represented by Tvl. G.Shyam Sundar, Vice President on the other part; both parties herein shall include their respective successors/legal heirs, legal representatives, executors, administrators, nominees and assignees.
Whereas Tvl. HINDUSTAN MOTORS LTD. have
a) established a new industrial unit at Adigathur PO, Kadambathur 631 203, Tiruvallur and have commenced production of their products at the new unit.
b) undertaken expansion/diversification of the existing unit at Adhigathur P.O. Kadambathur, 631 203, Tiruvallur and have commenced production of their products at this unit.

Whereas Government have, by their order Ms.No.500Industries (MIG.II) Department dated 14.5.90 directed that the new Industries to be set up in the 30 Most Backward taluks notified in para 2 of their order and also in three industrial complexes of SIPCOT at Pudukottai, Cuddalore and Manamadurai be eligible for full waiver of Sales tax dues for a period of five years upto a ceiling of the total investment made in fixed assets, and that existing industries in the most backward taluks and in the three SIPCOT COMPLEXES undertaking expansion/diversification are also eligible for full

waiver of sales tax dues for a period of five years subject to a ceiling of the total investment made in fixed assets under expansion/diversification.

Whereas Thiru / Tvl. HINDUSTAN MOTORS LTD. Adigathur PO, Kadambathur, Tiruvallur have applied for waiver of sales tax/ surcharge/ Additional surcharge / Additional tax to the party of the first part and have also produced the eligibility certificate issued by the General Manager, District Industries Center/ SIPCOT.

Now it is agreed between the parties as under:-

1. The tax/surcharge/additional surcharge /additional tax to be waived shall relate to the tax on the sale of the products manufactured by the new expanded or diversified unit in Tamil Nadu on or after 14th May 1990.

2.The total amount of tax/surcharge/additional surcharge/ additional tax to be waived shall not exceed the total investment made in fixed assets.

3. The party of the second part shall not alienate/or dispose or encumber or lease out the said fixed assets until the period of waiver nor shall be/they remove the fixed assets from the unit's premises.

4.The party of the second part shall insure the fixed assets at a value not less than the value certified by the SIPCOT/ G.M., District Industries Centre, and keep the insurance policies alive by renewing it every year until the period of waiver is completed and shall produce the policy for inspection by the party or the first part on or before 30th June of every year.

5. The party of the second part shall maintain the fixed assets in good condition so that the market value of the assets is maintained from time to time.

6. The party of the second part shall obtain the permission of the party of the first part before the sale of the fixed assets.

7.The party of the second part shall furnish to the party of the first part the audited balance sheet and Profit and Loss Account certified by the Chartered Accountant within six months of the close of the financial year.

8. The party of the first part reserves the right to cancel or modify any of the above conditions at any time during the period of waiver without any notice.

9. Any indulgence in malpractice of made being disguided as manufactured goods then the waiver scheme could be for closed by Commercial Taxes Dept and the tax assessed for all the years covered by the scheme be recovered in one lumpsum.
The total cost of fixed assets is Rs.8428.94 lacs.
The Sales tax waiver period will be as follows:

Waiver period:
1) 1998-1999 (01.10.1998) (01.01.1999)
2) 1999-2000
3) 2000-2001
4) 2001-2002
5) 2002-2003 (30.9.2003)

10. During the period of waiver, the party of the second part shall not collect any tax covered by waiver scheme.

11. In case of default of any of the conditions mentioned in paras 3,4,5,6 and 7 the waiver thus granted may be withdrawn for the period for which the same was granted. In such case of withdrawal of waiver, the tax and the interest and any penalty due thereon shall have such authority and be payable in such manner as specified under section 24(2) and such amount is also liable for interest provided under section 24(3) of Tamil Nadu General Sales Tax Act, 1959.

In witness whereof Government of Tamil Nadu represented by Thiru R.Thumanivannan, Assistant Commissioner of Commercial Taxes Zone VII, Chennai Thiru Shyam Sundar, Vice President representing Tvl. HINDUSTAN MOTORS LTD., Adigathur PO, Kadambathur, Tiruvallur have set their hands on the day, month and year first above written."
(emphasis supplied)

6.7. Coming to know that the reference to base sales volume and base production volume in Clause 10 of the eligibility certificate included the production and sales of the Wheel Loader Plant of the M/s.Hindustan Motors Ltd., at Pondicherry, M/s.Hindustan Motors Ltd. sought to delete the same. Accordingly, SIPCOT made amendment to the eligibility certificate by reducing the base sales volume. On application dated 7.2.2001, the SIPCOT further reduced the base production volume.

6.8. After the sale of Earth Moving Equipment Division to M/s.Caterpillar India Pvt. Ltd., on 9.2.2001, M/s.Hindustan Motors Ltd. sent a letter dated 28.7.2001 requesting the SIPCOT to issue fresh eligibility certificate deleting the production and sales figures of the Earth Moving Equipment Division stating that the Lancer Car Unit was a new unit and not an expansion as found mentioned in the eligibility certificate.

6.9. M/s.Hindustan Motors Ltd. started its commercial production on 1.10.1998. On the basis of eligibility certificate dated 22.12.1998, M/s.Hindustan Motors Ltd. started claiming sales tax waiver benefit from 1.1.1999 on all sales of Lancer cars effected both inside Tamil Nadu and inter-state from Tamil Nadu.

6.10. The first respondent on the basis of sales of M/s.Hindustan Motors Ltd. in Earth Moving Equipment Division and Power Products Division for the period 1999-2000 and 2001-2002, fixed the benchmark in the eligibility certificates dated 29.1.2001, 26.2.2001 and 18.10.2001.

6.11. On 6.8.2002, the officials of the Enforcement Wing of the Commercial Taxes Department, during the course of inspection, informed M/s.Hindustan Motors Ltd. that before enjoying the waiver benefit, M/s.Hindustan Motors Ltd. should comply with Clause 10 of the eligibility certificate in which base production volume and base sales volume were fixed.

6.12. M/s.Hindustan Motors Ltd. by way of abundant caution, also filed O.P.No.866 of 2002 before the Tamil Nadu Taxation Special Tribunal to quash paragraph 10 of the eligibility certificate dated 22.12.1998 as ultra vires the notification in G.O.P.No.396, dated 10.9.1991 issued under section 17(4) of the TNGST Act.

6.13. In the meanwhile, a notice dated 12.9.2002 was served on M/s.Hindustan Motors Ltd. stating that M/s.Hindustan Motors Ltd. was granted the benefit of waiver of sales tax for the manufacture of passenger cars based on the Eligibility Certificate granted by the SIPCOT dated 22.12.1998 pursuant to which M/s.Hindustan Motors Ltd. also entered into an agreement with the Assistant

Commissioner, Commercial Taxes on 23.3.2000, and both the Eligibility Certificate and the agreement provide that M/s.Hindustan Motors Ltd. would not be eligible for waiver in case of any violation of conditions prescribed in the Eligibility Certificate and the agreement. Alleging that M/s.Hindustan Motors Ltd. did not comply with the conditions imposed in Para-10 of the Eligibility Certificate and therefore they were not entitled to the waiver of sales tax, the Revenue raised a demand for the payment of tax of Rs.11,80,38,858/- under TNGST Act and Rs.19,76,81,886/- under CST Act for the assessment year 2000-2001. Aggrieved by the said demand notice dated 12.9.2002, M/s.Hindustan Motors Ltd. filed W.P.No.37042 of 2002.

6.14. Similarly, three other demand notices were issued; (i) dated 18.10.2002 demanding a sum of Rs.1988.03 lakhs for the assessment year 1999-2000; (ii) dated 18.10.2002 demanding a sum of Rs.674.55 lakhs for the assessment year 2001-2002; and (iii) dated 2.12.2002 demanding a sum of Rs.622.76 lakhs for the assessment year 2002-2003, all under the CST Act and the same have been challenged in W.P.Nos.40030, 40031 and 44733 of 2002 respectively.

6.15. Then, the Revenue issued four notices dated 12.9.2002, 18.10.2002, 18.10.2002 and 2.12.2002 for the assessment years 2000-2001, 1999-2000, 2001-2002 and 2002-2003 under TNGST Act demanding Rs.11,80,38,858/-, Rs.1131.90 lakhs, Rs.389.79 lakhs and Rs.316.28 lakhs respectively. Challenging the abovesaid demand notices, M/s.Hindustan Motors Ltd. filed O.P.Nos.867, 965, 966 and 1095 of 2002 on the ground that Para-10 of the Eligibility Certificate dated 22.12.1998 issued to M/s.Hindustan Motors Ltd. is ultra vires, that the rights conferred under the statute cannot be taken away or whittled down by an executive order and that no restriction can be superimposed by SIPCOT which is ultra vires the statutory notification.

6.16. The Revenue, on the other hand, justified the demand notices referred to above contending that M/s.Hindustan Motors Ltd. is bound by the conditions prescribed in the Eligibility Certificate dated 22.12.1998 issued to them as well as the terms and conditions of the agreement entered by them with the Zonal Assistant Commissioner which are made pursuant to Clause 3(v) of G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994 and that G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994 is not in conflict with the Sales-tax Waiver Scheme as the Government is well within its power to issue G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994 invoking executive power under Article 162 of the Constitution of India to levy and collect tax authorised under the provisions of the Sales Tax Act when the holder of the Eligibility Certificate dated 22.12.1998 failed to comply with the conditions prescribed in the Eligibility Certificate dated 22.12.1998 and the terms and conditions of the consequential agreement.

6.17. The abovesaid O.P.Nos.867, 965, 966 and 1095 of 2002 were heard along with O.P.No.866 of 2002 by the Taxation Special Tribunal, which, by order dated 24.1.2003, held that since the Eligibility Certificate dated 22.12.1998 issued to M/s.Hindustan Motors Ltd. and the terms and conditions incorporated in the agreement dated 23.3.2000 entered into between M/s.Hindustan Motors Ltd. and the Zonal Assistant Commissioner are only pursuant to paragraph 3(v) in G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994, the same is valid in law, and accordingly, dismissed the above Original Petitions. Challenging the above order of the Taxation Special Tribunal, the petitioner filed w.P.Nos.3230 to 3234 of 2003.

6.18. Citing the pendency of all the writ petitions filed by M/s.Hindustan Motors Ltd. referred to above and also interim orders obtained thereunder, pursuant to which M/s.Hindustan Motors Ltd. made payment of Rs.1.5 crores as per order dated 27.9.2002 made in WP.M.P.No.55709 of 2002 in W.P.No.37042 of 2002 and further sum of Rs.20 crores as per the order dated 6.2.2003 made in WP.M.P. No.4051 of 2002 in W.P.No.3230 of 2002, M/s.Hindustan Motors Ltd. by representation

dated 13.6.2003 requested SIPCOT, the agency authorised to issue Eligibility Certificate to extend the Eligibility Certificate already issued beyond 30.9.2003, but however, SIPCOT, by letter dated 19.3.2003 rejected the request of M/s.Hindustan Motors Ltd. Challenging the same, W.P.No.21162 of 2003 has been filed.

IV - CONTENTIONS MADE IN M/s.INDIA CEMENTS
DEFERRAL OF SALES TAX CASES

PART-A
(CONTENTIONS MADE ON BEHALF OF M/s.INDIA CEMENTS)

7. Mr.C.Natarajan, learned senior counsel appearing for M/s.India Cements reiterating the submissions made on behalf of M/s.India Cements before the Tribunal contends that:

i.G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994 is only an executive order, and the same is not concededly notified in the gazette as contemplated under Section 53(5) of the TNGST Act and therefore, shall not have any statutory force as against the G.O.P.No.92, Commercial Taxes and Religious Endowments, dated 22.2.1991 and G.O.Ms.No.376, dated 27.10.1992 and therefore, G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994 being an executive order should give way to G.O.P.No.92, Commercial Taxes and Religious Endowments, dated 22.2.1991 and G.O.Ms.No.376, dated 27.10.1992 in view of Article 265 of the Constitution of India;
ii.the clauses mentioned in G.O.Ms.No.119, Industries (MIG.II) dated 13.4.1994 as well as Para 5.3 of the Eligibility Certificate and related conditions are to be read into the Deferral of Sales Tax Scheme governed by a statutory notification issued in G.O.P.No.92, Commercial Taxes and Religious Endowments, dated 22.2.1991 and G.O.Ms.No.376, dated 27.10.1992 and therefore, the terms prescribed in the Eligibility Certificate dated 13.2.1998 and the agreement dated 12.4.2000 made in pursuance of the executive order in G.O.Ms.No.119, Industries (MIG.II) dated 13.4.1994 are all subservient to the statutory rights conferred under the said statutory notifications made in G.O.P.No.92, Commercial Taxes and Religious Endowments, dated 22.2.1991 and G.O.Ms.No.376, dated 27.10.1992, by exercising the power conferred under Section 17(A) of the TNGST Act and section 9(2) of the CST Act;
iii.as per Article 265 of the Constitution of India no tax can be levied or collected without authority of law. Since the M/s.India Cements Ltd. are entitled to the benefit of sales tax deferral scheme by virtue of statutory notifications made in G.O.P.No.92, Commercial Taxes and Religious Endowments, dated 22.2.1991 and G.O.Ms.No.376, dated 27.10.1992, by exercising the power conferred under Section 17(A) of the TNGST Act and section 9(2) of the CST Act, such benefits cannot be whittled down by directions issued under executive orders namely G.O.Ms.No.119, Industries (MIG.II) dated 13.4.1994, much less the consequential qualification prescribed in the Eligibility Certificate dated 13.2.1998 or by the terms and conditions of the agreement dated 12.4.2000 entered into between India Cements and the Zonal Assistant Commissioner, Commercial Taxes, pursuant to the Eligibility Certificate dated 13.2.1998;
iv.assuming the government has got power to give directions as provided under G.O.Ms.No.119, Industries (MIG.II) dated 13.4.1994, by executive orders, invoking Article 162 of the Constitution of India, the said directions are held to be ultra vires the statutory notifications made in G.O.P.No.92, Commercial Taxes and Religious Endowments, dated 22.2.1991 and G.O.Ms.No.376, dated 27.10.1992, by exercising the power conferred under Section 17(A) of the TNGST Act and section 9(2) of the CST Act, which has got the authority of law as per Article 265 of the Constitution of India and therefore, occupies the field;

v.clause 3(i) of the G.O.Ms.No.119, Industries (MIG.II) dated 13.4.1994 prescribes the qualification for availing the sales tax deferral and clause 3(ii) of the said G.O. enables the expansion/diversified unit of the existing industry to avail the benefit of the sales tax deferral either from the date of achieving the BSV or BPV whichever is earlier, in that financial year. It is, therefore, argued that if BSV is achieved earlier and BPV is reached later in the financial year, the benefit of sales tax deferral should date back to the earlier date of achieving BSV, similarly if the BPV is achieved earlier and BSV is achieved later, it should date back to the earlier date of achieving BPV and only then, the object of the deferral scheme governed under the statutory notifications with an authority of law as per Article 265 of the Constitution of India can be achieved. Any other interpretation would frustrate the object of the scheme;

vi.the word "when" mentioned in clause 3(ii) of G.O.Ms.No.119, Industries (MIG.II) dated 13.4.1994 should be read as "if" and therefore, expansion/diversified unit would be eligible for the benefit of deferral scheme for the sales made in the financial year in excess of BSV provided the actual production of the industry exceeds the BPV in that year;
vii.even if the word, 'when' is read as 'after', the M/s.India Cements Ltd. would be eligible for deferral of sales tax on the sales in excess of BSV after the actual production of the industry in the financial year exceeds the BPV and the benefit should date back to the date of reaching the BSV. It is therefore contended that the word "when" cannot be construed with reference to the time of an event for claiming the deferral of sales tax, but only with reference to a qualification prescribed for availing the benefit of sales tax deferral. Only by liberal interpretation of clause 3(ii), the object sought to be achieved by the sales tax deferral scheme can be achieved;

viii.the Revenue having given the benefit of deferral of sales tax for 12 years, of course, prescribing certain conditions, with reference to reaching of BPV/BSV, with the object of achieving the highest production and sale of the existing unit in the last three years prior to the commencement of the commercial production in the expansion unit, the same should not be either dilated or denied in any financial year of the total period of 12 years if the industry reaches BSV/BPV in that financial year, whichever is earlier. The benchmark for availing the benefit of the sales tax deferral scheme should be that the industry should have reached BSV in that particular financial year it is immaterial whether the industry reaches the BSV/BPV earlier and in any event, the conferment of partial benefit of the scheme imposing conditions that the industry would be eligible for the sales tax deferral only if they reach both BSV/BPV is alien not only to the sales tax deferral scheme but to the new industrial policy;
ix.the judgment of Division Bench of this Court in W.P.No.18199 of 1999 dated 5.12.2001 arose against the order of Taxation Special Tribunal in O.P.Nos.1347 & 1348 of 1999 dated 5.11.1999. Even though the Taxation Special Tribunal considered the question whether the industry is entitled to the benefit of deferral of sales tax on reaching the base sales, the same was not an issue before the Division Bench of this Court. In the said case, the industry claimed the benefit of deferral of sales tax on the sales of whole year to be divided into 12 parts, which was rejected by the Division Bench. The point whether the benefit of deferral of sales tax should be given from the date of reaching BSV or BPV, whichever is earlier was not the issue before the Division Bench and therefore, any observation by the Division Bench in that regard is not binding on the Revenue or the assessee as the same was not an issue before the Division Bench of this Court and hence, the dismissal of the writ petition in W.P.No.18199 of 1999 by the Division Bench of this Court by judgment dated 5.12.2001 and the observation made thereunder with reference to the division of the taxable sales turnover for the whole year into 12 parts to allow the assessee therein to get the deferral benefit in excess of the taxable sales turnover for each month are all not relevant to decide the present controversy; and
x.the Revenue having issued a circular is bound by the same, as held by the Apex Court as well as the Division Bench of this Court in a catena of decisions.

PART-B
(CONTENTIONS MADE ON BEHALF OF THE REVENUE/SIPCOT)

8. Per contra, Mr.P.S.Raman, learned Additional Advocate General appearing for the Revenue justifying the demand notices, reiterated the reasons that weighed the Special Tribunal in the order dated 19.4.2002 contends that:

i.G.O.P.No.92, Commercial Taxes and Religious Endowments, dated 22.2.1991 and G.O.Ms.No.376, dated 27.10.1992 are nothing but the sources of the deferral scheme for having notified under Section 17(A) of the TNGST Act and section 9(2) of the CST Act. Since the scheme notified under the said G.O.P.No.92, Commercial Taxes and Religious Endowments, dated 22.2.1991 and G.O.Ms.No.376, dated 27.10.1992 do not provide the manner in which the said scheme has to be implemented, the Government is well within its executive power through G.O.Ms.No.119, Industries (MIG.II) dated 13.4.1994 invoking the power conferred under Article 162 of the Constitution of India to prescribe the method and also to provide the machinery with suitable directions and the procedure to be followed thereunder by the authorised agency, in the instant case, SIPCOT for implementing the scheme;

ii.the contention of the M/s.India Cements Ltd. that G.O.Ms.No.119, Industries (MIG.II) dated 13.4.1994 and the eligibility certificate as well as the terms of the agreement whittle down the benefit provided under the scheme vide G.O.P.No.92, Commercial Taxes and Religious Endowments, dated 22.2.1991 and G.O.Ms.No.376, dated 27.10.1992 is totally misconceived as the later notifies the deferral scheme as a source and the former provides the method and machinery for implementing the scheme and as such there is no conflict between them and consequently, the question that the G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994 and the provisions of eligibility certificate and the terms and conditions of the agreement are ultra vires the scheme is baseless. For the same reason the contention that G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994 is without jurisdiction as the field is already occupied by G.O.P.No.92, Commercial Taxes and Religious Endowments, dated 22.2.1991 and G.O.Ms.No.376, dated 27.10.1992 is also untenable;

iii.M/s.India Cements Ltd. having approbated the scheme is not entitled to reprobate the conditions imposed for the purpose of implementing the scheme and therefore, unless both base production volume and base sale volume are achieved, the M/s.India Cements Ltd. cannot claim the benefit of deferral sales tax scheme;

iv.On the interpretation of the word, 'when' employed in Clause 3(ii) of G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994, it is submitted that only in the year where the industry reaches both the basic sales volume/basic production volume, the industry would be eligible for the benefit of sales tax deferral. Therefore, the industry would be eligible for the benefit of the scheme only from the time when it achieves both BPV/BSV and not otherwise and hence, the word, 'when' denotes the starting time of the benefit.

v.It is argued that the circular dated 1.5.2000 issued by the first respondent is inapplicable in view of the order of the Special Tribunal dated 5.11.1999 in O.P.Nos.1347 and 1348 of 1999 in Madras Cements Ltd., v. State of Tamil Nadu, whereunder it is held that "The only interpretation that could be given to the said clause which is reflected in the eligibility certificate and the agreement entered into by the petitioner is, that both the Base Production Volume and Base Sale Volume should have to be reached before the petitioner could claim deferral of sales tax. In the alternative it means that if the Base Sale Volume had been reached earlier, but the base production volume had not been reached, the petitioner will not be entitled to get the deferral facility. It is only after the Base

Production Volume is reached that the right of deferral accrues. Vice-versa if the base Production Volume had been reached later, it is only after the base sale volume is reached that the petitioner will be entitled to get the deferral facility. This in effect means whichever condition is reached later then alone the petitioner gets the right to defer the payment of sales tax", as the said view of the Special Tribunal was confirmed by the Division Bench of this Court by order dated 5.12.2001 in W.P.No.18199 of 1999.

9. Mr.Devaraj, learned counsel appearing for the SIPCOT while adopting the arguments of Mr.P.S.Raman, learned Additional Advocate General appearing for the Revenue, also contends that the eligibility certificate derives the statutory status by virtue of G.O.Ms.No.119 Industries (MIG-I) dated 13.4.1994 read with G.O.P.No.92, Commercial Taxes and Religious Endowments dated 22.2.1991 and G.O.Ms.No.376 dated 27.10.1992 and any violation of the qualifications prescribed in the eligibility certificates would disentitle the assessee to avail the benefits of the Sales Tax Deferral Scheme.

V - CONTENTIONS MADE IN M/s.HINDUSTAN MOTORS LIMITED
WAIVER OF SALES TAX CASES

PART-A
(CONTENTIONS MADE ON BEHALF OF
M/s.HINDUSTAN MOTORS LIMITED)

10. Adopting the arguments of Mr.C.Natarajan, made on behalf of M/s.India Cements in W.P.No.13697 and 13698 of 2002, Mr.Sriprasath, learned counsel for M/s.Hindustan Motors Limited, reiterating the contentions made on behalf of Hindustan Motors Limited before the Special Tribunal, and challenging the impugned demands, assails the reasons that weighed the Special Tribunal in the common order dated 24.1.2003, on the following grounds:-

(i)the Revenue had erred in ignoring the most vital fact that the BPV and BSV of the Earth Moving Equipment, which was the existing industry could not be the basic criterion for prescribing the qualification for the waiver of sales tax scheme granted to the diversified unit which was set up for the manufacture of Lancer cars;

(ii)the benefits conferred in the waiver scheme under G.O.P.No.92, Commercial Taxes and Religious Endowments, dated 22.2.1991 and G.O.Ms.No.376, dated 27.10.1992 for having notified under Section 17(4) of the TNGST Act and 8(5) of the CST Act, has the authority of law within the meaning of Article 265 of the Constitution of India, inasmuch as the exemption notifications are also legislative in character and operate as a part of the Act. The Government having granted such benefit of waiver of sales tax, the same cannot be restricted by way of an executive order passed under G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994, invoking Article 162 of the Constitution of India, and the consequential eligibility certificate dated 22.12.1998 and the agreement dated 23.3.2000. Therefore, any direction prescribed under the executive orders, much less the conditions provided under the eligibility certificate as well as the agreement, should give way to achieve the object intended under the waiver scheme;

(iii)the G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994 as well as the qualifications prescribed in the eligibility certificate dated 22.12.1998 as well as the terms and conditions provided in the agreement dated 23.3.2000 are not applicable to the diversification unit of the Hindustan Motors Limited for the reason that the directions imposed in clause 3(i) to 3(v) in G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department,

dated 13.4.1994 are all intended only to the expansion units, which seek the deferral of sales tax and not to the diversified units which seeks benefit of waiver of sales tax, merely because G.O.P.No.92, Commercial Taxes and Religious Endowments, dated 22.2.1991 and G.O.Ms.No.376, dated 27.10.1992 issued under Section 17(4) of the TNGST Act and Section 8(5) of the CST Act contemplate that the diversified unit should get the eligibility certificate from the SIPCOT and clause 3(v) of G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994 provides that in the said eligibility certificate the SIPCOT should work out the BPV/BSV and therefore clause 10 of the Eligibility Certificate dated 22.12.1998 or any related conditions provided under the agreement dated 23.3.2000 are arbitrary and unreasonable and in any event the same are inapplicable to the diversified unit, which is set up for manufacture of a different product, viz., Lancer Cars than the existing industry. It is therefore contended that the question of approbation and reprobation does not arise, as there is no basis for fixing BPV/BSV in the case of diversified units of which the production is totally different from the existing industry;

(iv)merely because the diversified unit applied for eligibility certificate as an expansion unit of the existing industry, the BSV and BPV of the existing industry which manufactures earth moving equipment cannot be a basis for working out BPV and BSV for the diversified unit also and hence, for all purposes the diversified unit has to be construed only as a new unit of the existing industry and therefore, unit is entitled to the benefit of waiver of sales tax conferred under G.O.P.No.92, Commercial Taxes and Religious Endowments, dated 22.2.1991 and G.O.Ms.No.376, dated 27.10.1992; and
(v)in any event, when the existing industry manufactured earth moving equipment was subsequently sold to M/s.Caterpillar India Pvt. Ltd. on 9.2.2001, the diversified unit could not be compelled to satisfy the BSV/BPV of the said existing industry and any demand of tax for the alleged violation of non reaching of BSV/BPV is arbitrary, unreasonable and illogical.

PART-B
(CONTENTIONS MADE ON BEHALF OF THE REVENUE/SIPCOT)

11. In the case of Hindustan Motors Ltd., in addition to the submissions made in India Cements cases and also sustaining the reasons that weighed the Special Tribunal justifying the impugned demand in the common order dated 24.1.2003 in O.P.Nos.866, 867, 965, 966 and 1095 of 2002, Mr.Mr.P.S.Raman, learned Additional Advocate General appearing for the Revenue contends that,

(i)as in the case of deferral of sales tax scheme, G.O.P.No.92, Commercial Taxes and Religious Endowments, dated 22.2.1991 and G.O.Ms.No.376, dated 27.10.1992 is a source for notifying the waiver of sales tax scheme. Since the source of the scheme does not provide the method and machinery for implementing the waiver scheme, even though the said scheme is statutory in character in view of Article 265 of the Constitution of India, the Government is well within its power to pass independent executive order in G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994 invoking Article 162 of constitution of India prescribing the method and machinery imposing necessary directions for the same. Consequently, the directions mentioned in the eligibility certificate dated 22.12.1998 obtained from SIPCOT as per G.O.P.No.92, Commercial Taxes and Religious Endowments, dated 22.2.1991 and G.O.Ms.No.376, dated 27.10.1992 should be complied with as per the directions prescribed in G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994. After having applied for such eligibility certificate and submitting themselves for the qualifications prescribed in the eligibility certificate which had attained a statutory character on account of G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994 issued under the executive power of the Government issued under Article 162, any violation to such directions would dis-entitle the industry to avail the benefit of waiver of sales tax scheme;

(ii) there is an absolute necessity for the fulfilment of the condition that both the expansion as well as the diversified units should achieve the BPV apart from reaching the BSV for availing either the benefit of the deferral or the waiver scheme, because the very object of the scheme is to increase the production by way of new industrial policy by compelling them to reach the BPV, without compromising the revenue of the State, by requiring them to reach the BSV. Then only the benefit of the waiver of sales tax can be given to the holder of the eligibility certificate, whether in the case of expansion unit or in the case of diversified unit;

(iii) the Hindustan Motors Limited could not plead either innocence or ignorance of the workability of BPV/BSV for the simple reason that they themselves applied for amendment to BPV/BSV and enjoyed the benefits for 4= years, taking BPV and BSV of the existing industry, even though the production of the diversified unit is totally new, viz., Lancer Cars, from that of the existing industry, viz., earth moving equipment;

(iv)in any event, M/s.Hindustan Motors Ltd. is not entitled to claim premium on the violation of the terms of the agreement that after availing the benefit it should not sell the assets of the existing industry, and therefore, the contention that the existing unit was subsequently sold to M/s.Caterpillar India Pvt. Ltd. on 9.2.2001 cannot be a ground that alleged violation to the condition with regard to non achieving of BPV/BSV had become unworkable and therefore, the consequential denial of benefit of the scheme is neither arbitrary nor unreasonable; and

(v)even though the production of the BPV/BSV of the then existing industry cannot be the basis for granting benefit of the waiver scheme for the goods manufactured by the unit, which is construed as a new industry manufacturing different goods, it is not proper for the assessee to claim the benefit of the scheme before this court, particularly invoking the power of judicial review conferred under Article 226 of the Constitution of India, as it is for the Government to pass orders after looking into the relevant criteria.

12. Mr.Devaraj, learned counsel appearing for the SIPCOT while adopting the arguments of Mr.P.S.Raman, learned Additional Advocate General appearing for the Revenue, also contends that the eligibility certificate derives the statutory status by virtue of G.O.Ms.No.119 Industries (MIG-I) dated 13.4.1994 read with G.O.P.No.92, Commercial Taxes and Religious Endowments dated 22.2.1991 and G.O.Ms.No.376 dated 27.10.1992 and any violation of the qualifications prescribed in the eligibility certificates would disentitle the assessee to avail the benefits of the Sales Tax Waiver Scheme.

VI COMMON CONTENTIONS AS TO THE INTEREST PAYABLE
BY EITHER SIDES, VIZ., DEALER OR REVENUE

13. Mr.C.Natarjan, learned senior counsel appearing for M/s.India Cements in India Cements deferral of sales tax cases and Mr.Sriprasath, learned counsel appearing for M/s.Hindustan Motors Limited in Hindustan Motors Limited waiver of sales tax cases as well as Mr.P.S.Raman, learned Additional Advocate General appearing for the Revenue, submitted that the dealer as well as the Revenue would forego the interest on the tax payable by the dealer or on the amount refundable by the Revenue, as the case may be.

VII - CONSIDERATION & FINDING

14. We have given our careful consideration to the arguments advanced on behalf of all the parties.

15. Since both the batch of cases, viz., one filed by M/s.India Cements Ltd., claiming the benefit of deferral of sales tax; and another filed by M/s.Hindustan Motors Ltd. claiming the benefit of Waiver of sales tax, revolve on the point that the directions given in Clause 3 of G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994 and the qualifications prescribed in the Eligibility Certificates issued to the dealers concerned as well as the terms and conditions of the consequential agreements would wipe out the benefits conferred under the deferral and waiver schemes, which are intended to help the industries to tide over the initial teething troubles, they are being disposed of by this common order.

VII-(A).What is meant by the deferral of sales tax/
Waiver of Sales Tax scheme?

16.1. The power of taxation can be used not merely for raising the revenue, but also to regulate the economy, to promote the industrialisation and to encourage the investment for expansion or diversification of the existing industries and to develop new industries.

16.2. Our country is emerging as a major power with the goal aiming:
(i) to maintain a sustained growth in productivity;
(ii) to enhance gainful employment;
(iii) to achieve optimal utilization of human
resources;
(iv) to attain international competitiveness; and
(v) to transform India into a major partner and
player in the global arena.

16.3. In the process of meeting the challenges that come across the globalization of economy, industry, trade and commerce, the Government have come forward with liberalization schemes such as, granting certain exemptions in respect of tax payable on the turnover of the sale of goods produced and sold by the new or expanded or diversified industrial units, of course, subject to the directions, qualifications and the terms and conditions prescribed in the scheme, eligibility certificate and the consequential agreements, with a view to boost the industrialisation by
(i) deregulating Indian Industry,
(ii) allowing the industry freedom and flexibility in responding to market forces, and
(iii) providing a policy regime that facilitates and fosters growth of Indian Industry.

16.4. The power to maintain economic unity includes the power to grant exemptions or to reduce the rate of interest or defer or waive the sales tax as a special case for achieving the industrial development and to provide certain tax incentives which is also intended to attain the economic equality in the growth and development. The economic development of the State to bring it into equality with all other States and thereby develop the economic unity of India is one of the major commitments or the goals of the constitutional aspirations of this land.

16.5. The Government of Tamil Nadu, namely, the 3rd respondent herein, enunciating the above new industrial policy in the national context of economy in transition, have come forward with the constructive incentives such as, Sales-tax Deferral/Sales-tax Waiver invoking the statutory power conferred on them under the relevant statutes, viz., TNGST Act and CST Act, in order to create a congenial atmosphere to the industries for stimulating rapid growth of industrialisation in the State, so that the State economy will grow faster and these incentives have been proposed to enhance the competitiveness of the State and also foster the pace of industrialisation in this part of the country.

16.6. Accordingly, the Government issued statutory notifications, notifying the Deferral of sales tax

scheme under section 17(A) of the TNGST Act and 9(2) of the CST Act and notifying the Waiver of sales tax scheme under section 17(4) of the TNGST Act and 8(5) of the CST Act.

16.7. Under the Sales-tax Deferral/Waiver Scheme, new units as well as expansion/diversification units of existing undertakings proposed to be set up in Most Backward/Backward taluks are eligible for the benefit of Sales-tax Deferral/Sales-tax Waiver scheme at the option of the industries concerned and such industries, either small or medium or major, can either avail 12 year deferral benefit or 5 year waiver benefit as per the relevant Government Orders issued in that connection by the State subject to the conditions prescribed thereunder and the SIPCOT is the authorised agency to issue Eligibility Certificate under the Schemes. The Eligibility Certificate issued by SIPCOT contemplates the holder of the certificate to enter into an agreement with the Revenue, agreeing with the conditions of the exemption, either in the case of deferral or waiver scheme.

17. With this background of industrial policy of the State and the incentives provided thereunder by way of deferral/waiver of sales-tax scheme, which is the subject matter in these writ petitions, let us analyse the controversies projected in these batch of cases:-
(i) In the case of expansion unit of an existing industry, whether the industry will be eligible for sales tax deferral in any financial year if the production exceeds the Base Production Volume (in short, 'BPV') for the sales made in that year in excess of the Base Sales Volume (in short, 'BSV'), is the issue that arises for our consideration in W.P.Nos.13697 and 13698 of 2002.

(ii) In the case of diversified unit of an existing industry, whether the industry will be eligible for sales tax waiver in any financial year if the production exceeds the Base Production Volume (in short, 'BPV') for the sales made in that year in excess of the Base Sales Volume (in short, 'BSV'), despite the fact that the production of the existing unit and diversified unit are totally different and the existing unit was subsequently sold to a third party, is the issue that arises for our consideration in W.P.Nos.37042, 40030, 40031 & 44733 of 2002 and 3230, 3231, 3232, 3233, 3234 & 21162 of 2003.

For the purpose of clarity, we propose to discuss the contentions made by both the sides, based on the issues that arise supplementary to the above controversies.

VII-(B).IS THERE ANY CONFLICT BETWEEN THE PROVISIONS WHICH CONFER JURISDICTION TO GRANT THE BENEFITS OF THE SCHEMES AND THE PROVISIONS WHICH REGULATE THE PROCEDURE FOR IMPLEMENTING THE SCHEME:

18.1. The source for both the schemes, viz., Sales Tax Deferral Scheme and Sales Tax Waiver Scheme are traceable to statutory provisions as the Sales Tax Deferral Scheme is notified in exercise of power conferred under Section 17(A) of the TNGST Act and 9(2) of the CST Act by way of G.O.P.No.92, Commercial Taxes and Religious Endowments Department, dated 22.2.1991 and G.O.Ms.No.376, dated 27.10.1992 and the Sales Tax Waiver Scheme is notified in exercise of power conferred under Section 17(4) of the TNGST Act and 8(5) of the CST Act by way of G.O.P.No.92, Commercial Taxes and Religious Endowments Department, dated 22.2.1991 and G.O.Ms.No.376, dated 27.10.1992. Concededly, both the Government Orders are published in the Gazette as contemplated under section 53(5) of the TNGST Act. It is well settled law that exemption notifications are statutory in nature and therefore the notifications notifying both the schemes have to be given statutory force. Consequently, they got the authority of law under Article 265 of the Constitution of India [Video Electronics Pvt. Ltd. v. State of Punjab (77 STC 82)].

18.2. It is true that Article 265 of the Constitution is a bar for G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994, an executive order. But, when there are

no provisions providing the method and machinery for the implementation of the Schemes, G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994 was passed by the Government, of course, invoking the power conferred under Article 162 of the Constitution of India.

18.3. The principle that the executive power of the State conferred under Article 162 of the Constitution of India cannot be exercised in the filed occupied under Article 265 of the Constitution of India, which is otherwise known as 'theory of occupied field' cannot be disputed, but what is to be tested is,

Whether the statutory notifications granting exemption by the Government in exercise of the rule making power, which, in turn, has got the authority of law under Article 265 of the Constitution of India, for implementing the deferral/ waiver of sales tax scheme provide the method and machinery as well as the regulatory procedure for implementing the said schemes, and if so, is there any conflict between them?

18.4. With the risk of repetition, we briefly refer that by way of G.O.P.No.92, Commercial Taxes and Religious Endowments Department, dated 22.2.1991 and G.O.Ms.No.376, dated 27.10.1992, the Government invoking Section 17-A of the TNGST and Section 9(2) of the CST Act notified the Deferral Scheme and invoking Section 17(4) of the TNGST Act and Section 8(5) of the CST Act notified the Waiver Scheme and therefore, G.O.P.No.92, Commercial Taxes and Religious Endowments Department, dated 22.2.1991 and G.O.Ms.No.376, dated 27.10.1992 are nothing but the source of power which confer the jurisdiction on the Government to sanction the scheme. Since the said G.O.P.No.92, Commercial Taxes and Religious Endowments Department, dated 22.2.1991 and G.O.Ms.No.376, dated 27.10.1992 were issued by exercise of statutory power, the same have the authority of law under Article 265 of the Constitution of India, because it is a settled law that a notification of the State Government granting exemption, either by the Deferral of sales tax scheme or Waiver of sales tax scheme under the rule making power conferred on the Government by the State Legislature, is nothing but an exercise of Legislative power having authority of law within the meaning of Article 265 of the Constitution of India [Video Electronics Pvt. Ltd. v. State of Punjab (77 STC 82)]. In this regard, it is apt to refer Article 265 of the Constitution of India:
"Article 265. Taxes not to be imposed save by authority of law.- No tax shall be levied or collected except by authority of law."

18.5. The words "Levied" and "collected" used in Article 265 of the Constitution of India enjoin that at every stage, the process of taxation must be authorised by law, otherwise it lacks jurisdiction. Once such levy and collection of tax is exempted by the very same legislative power, by issuance of notification invoking the rule making power conferred under the very statute, by virtue of legal fiction, the State is precluded to levy and collect such tax exempted either under the Deferral of sales tax scheme or Waiver of sales tax scheme.

18.6. According to the dealers, the benefit conferred under the deferral of sales tax scheme or waiver of sales tax scheme cannot be cancelled or whittled down or modified by executive orders or the Eligibility Certificate or the terms and conditions incorporated in the consequential agreements entered into. In this regard, a reference to Article 162 of the Constitution of India would be apposite:
"Article 162. Extent of executive power of State.- Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the

executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof."

18.7. As per Article 162 of the Constitution of India, the Government is empowered to pass executive orders and the same shall be extended to matters in respect of which legislature has the power to make laws, but such power cannot be exercised in the field already occupied by the legislature and consequently, we are compelled to decide whether the directions mentioned in G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994, much less the qualifications prescribed in the Eligibility Certificates and the terms and conditions incorporated in the consequential agreements in the respective cases are inroads into the field occupied by the Scheme of Deferral/Waiver of sales tax, which has got the authority of law under Article 265 of the Constitution of India, as noticed earlier.

18.8. A careful and comparative reading of the G.O.P.No.92, Commercial Taxes and Religious Endowments Department, dated 22.2.1991 and G.O.Ms.No.376, dated 27.10.1992 on the one hand and the G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994 and the Eligibility Certificates issued thereunder and the consequential agreements entered into between the parties on the other hand, would lead to a distinction arising between the provision which confers the jurisdiction and the provision which regulates the procedure, while the former is a source of power to grant the exemption, the latter speaks about the method and machinery to implement the scheme and thus, provides a regulatory procedure for the same. Therefore, while G.O.P.No.92, Commercial Taxes and Religious Endowments Department, dated 22.2.1991 and G.O.Ms.No.376, dated 27.10.1992 are referred to the source of power under the relevant provisions of the Statute, viz., Section 17(A) of the TNGST Act and Section 9(2) of the CST Act in the case deferral of sales tax and Section 17(4) of the TNGST Act and Section 8(5) of the CST Act in the case of waiver of sales tax, and confer the jurisdiction on the Government to grant the benefit under the deferral/waiver scheme, the G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994 provides the method and machinery and the terms and conditions that could be imposed by way of regulatory procedure and thus, stands on a different plane, but to achieve the same object, viz., to advance productivity by way of industrialization under the new industrial policy of the State without compromising with the revenue of the State. Hence, it cannot be said that G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994 is an inroad into the field occupied by G.O.P.No.92, Commercial Taxes and Religious Endowments Department, dated 22.2.1991 and G.O.Ms.No.376, dated 27.10.1992.

18.9. Therefore, inasmuch as G.O.P.No.92, Commercial Taxes and Religious Endowments Department, dated 22.2.1991 and G.O.Ms.No.376, dated 27.10.1992, which have got authority of law under Article 265 of the Constitution of India, do not provide any regulatory procedure for granting the benefit of the Deferral/Waiver Scheme, the State Government invoking Article 162 of the Constitution of India is empowered to pass G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994 incorporating suitable directions prescribing regulatory procedure for granting the exemption benefits notified under the respective schemes and therefore, it cannot be said that it is an inroad into the field already occupied. In view of the above clear distinction between the deferral/waiver schemes notified under G.O.P.No.92, Commercial Taxes and Religious Endowments Department, dated 22.2.1991 and G.O.Ms.No.376, dated 27.10.1992 and the regulatory procedure prescribed in G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994 for implementing the schemes with definite method and machinery appointing the SIPCOT as authorised agency for issuing Eligibility Certificate and to work out BPV/BSV and also to impose such other conditions, we do not see any conflict between the schemes provided under the G.O.P.No.92, Commercial Taxes and Religious Endowments Department, dated 22.2.1991 and G.O.Ms.No.376, dated 27.10.1992 and the regulatory measures provided under

G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994 including the qualifications prescribed in the Eligibility Certificate and the terms and conditions incorporated in the consequential agreements.

VII-(C). Harmonious construction of the provisions relating to the source of the schemes, vide G.O.P.No.92, Commercial Taxes and Religious Endowments Department, dated 22.2.1991 and G.O.Ms.No.376, dated 27.10.1992 and the provisions of the regulatory procedure in G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994 and the qualifications prescribed in the eligibility Certificates and the terms and conditions incorporated in the consequential agreements

19.1. It is a settled law that fiscal laws must be strictly construed and the words must say what they mean and nothing should be presumed or implied. It is also a trite that the principle that fiscal statutes should be strictly construed does not rule out the application of the principle of reasonable construction to give effect to the purpose or intention of any particular provision as apparent from the scheme of the Act, with the assistance of such external aids, as are permissible under law [SHREE SAJJAN MILLS LTD. v. COMMISSIONER OF INCOME TAX, M.P. BHOPAL, 1986 TAX LAW REPORTER 48].

19.2. In order to apply the principle of reasonable construction to give effect to the purpose or intention of the provision, as apparent from the scheme of the Act, the Court must endeavour to harmonise the source of the Schemes as well as the regulatory procedure, because the statute should be interpreted in such a way to avoid absurdity and oracular interpretation and to have harmonious construction to advance the implementation of the schemes and to make them workable, unless it is impossible to do so, rather than making it meaningless.

19.3. This leads us to refer back the intention behind the Sales Tax Deferral/Waiver Scheme. The power conferred on the State to notify the Schemes, either for deferral or waiver, is nothing but a concession or a freedom from an statutory obligation which an exemptee is otherwise liable to discharge. It is a privilege granted, not available to all others. Therefore, an exemption, thus granted under statutory provisions of a fiscal statute is held to be a concession granted, so that the beneficiaries of such concession are required to pay the tax after the deferral period in case of deferral of sales tax or required not to pay tax during the waiver period in the case of waiver of sales tax, which they are otherwise liable to pay under the statute. Hence, the recipients of such concession have no legally enforceable right against the Government to grant a concession except to enjoy the benefits of the concession during the period of its grant. This right to enjoy is a defeasible one as it may be taken away in simpliciter or on the ground of violation of the conditions prescribed under the respective schemes, in exercise of the very power under which the exemption was granted. Either for declaring or for withdrawing such exemption in the case of deferral or waiver, the cardinal principle is that the same must be exercised in the public interest and not otherwise [vide: State of Rajasthan v. J.K.Udaipur Udyog Ltd. (2004) 7 SCC 673].

19.4. G.O.P.No.92, Commercial Taxes and Religious Endowments Department, dated 22.2.1991 and G.O.Ms.No.376, dated 27.10.1992, which are the sources of the schemes do not provide the procedure for implementing the schemes and the Government has a power to prescribe the regulatory procedure for implementing the schemes and to prescribe the method as well as machinery and issue conditions and directions related thereto, such exercise of power, by itself cannot be complained that the Government by way of executive order proposed to cancel or modify the benefit granted by the legislative.

19.5. When G.O.P.No.92, Commercial Taxes and Religious Endowments Department, dated 22.2.1991 and G.O.Ms.No.376, dated 27.10.1992 do not provide any method and machinery for the implementation of the schemes, the Government is well within its power to pass G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994 prescribing the method and machinery for the implementation of the schemes. Since G.O.P.No.92, Commercial Taxes and Religious Endowments Department, dated 22.2.1991 and G.O.Ms.No.376, dated 27.10.1992 have not prescribed the method and machinery for the implementation of the schemes, it cannot be stated that it occupied the field.

19.6. Consequently, the contention that, by way of executive order in G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994 and the Eligibility Certificates issued pursuant to the said G.O., and the consequential agreements, the benefit conferred under deferral of sales tax scheme or waiver of sales tax scheme is sought to be whittled down stands rejected. On the other hand, by virtue of G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994, the Eligibility Certificates issued thereunder would also gain the statutory status and therefore, the qualifications prescribed thereunder by the SIPCOT are to be read into G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994 and hence, binding on the beneficiaries. Similarly, the terms and conditions imposed in the consequential agreements entered into between the dealers and the Revenue would also have the statutory force in all fours. Any violation either to the directions of G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994, much less the qualifications prescribed in the Eligibility Certificates or the terms and conditions incorporated in the consequential agreements, would disentitle the beneficiaries, because the source for the notifications for both the schemes is traceable to sections 17(A) of the TNGST Act and 9(2) of the CST Act in the case of deferral and section 17(4) of the TNGST Act and 8(5) of the CST Act in the case of waiver. As already observed, the directions in G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994 and the qualifications in the Eligibility Certificates issued thereunder and the terms and conditions incorporated in the consequential agreements are all meant for the implementation of the said deferral/waiver schemes. While the statutory notifications, viz., G.O.P.No.92, Commercial Taxes and Religious Endowments Department, dated 22.2.1991 and G.O.Ms.No.376, dated 27.10.1992, which forms the source of the deferral of sales tax scheme or waiver of sales tax scheme and confer jurisdiction for the Government for sanction of the benefits under the schemes, G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994 prescribes the regulatory procedure. The distinction therefore is sharp but glaring because, the same arises between the provisions which confer the jurisdiction and the provisions which regulate the procedure. It is a settled law that jurisdiction can neither be waived nor created by consent, but, on the other hand, a procedural provision may be waived by conduct or agreement [Supdt. Of Taxes v. Onkarmal Nathmal Trust, AIR 1975 SC 2065]. Therefore, the question of comparing and contrasting the both will not arise as both stand on different plane, independently, of course, to achieve the same object. Hence, to contend that the directions in G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994 and the qualifications in the Eligibility Certificates and the terms and conditions incorporated in the consequential agreements are an inroad into the field occupied by G.O.P.No.92, Commercial Taxes and Religious Endowments Department, dated 22.2.1991 and G.O.Ms.No.376, dated 27.10.1992 and that there are conflicts between them is totally illogical and irrational. Consequently, the dealers having by their conduct and agreement elected to comply with the directions in G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994, and the qualifications prescribed in the Eligibility Certificates and the terms and conditions incorporated in the consequential agreements, with a specific knowledge that any violation thereof would deprive them of the benefit of the respective schemes, and thus, the dealers having approbated are not entitled to reprobate.

19.7. It is thus inevitable to harmonise the directions given in G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994, the qualifications prescribed in the Eligibility Certificates issued pursuant to the said G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994 and the terms and conditions of the consequential agreements entered into between the dealers and the Revenue which all form part of the regulatory procedure with that of the object and reasons as well as the intention behind the schemes for deferral and waiver of sales tax statutorily notified to achieve the positive developments in the industries and economy so as to keep the investment climate of the country to compete in the global arena, and in order to avoid any conflict, inconsistency and absurdity as well as to refrain from unreasonable, illegal, irrational and arbitrary exercise of statutory power. Only then, the twin objects, viz., (i) production; and (ii) revenue of the State could be achieved. Such reasonable and harmonious construction could be/is capable by blending clause 3(i) and (ii) of G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994, viz.,

i) The Industry will be eligible for sales tax deferral only if in a financial year production exceeds the base production volume which is the highest annual production in the 3 years prior to expansion.

ii) When the actual production in the industry in any financial year exceeds the base production volume, the industry would be eligible for deferral of sales tax for sales made in that year in excess of the base sales volume under Tamil Nadu General Sales Tax, which is the highest of the actual annual sales in the last 3 years prior to expansion.

into one reading both the clauses (directions) of course, eschewing certain words, which is inevitable in the public interest as follows:
"The Industry will be eligible for sales tax deferral only if in a financial year production exceeds the base production volume for sales made in that year in excess of the base sales volume under Tamil Nadu General Sales Tax"
Otherwise, either of the clauses i.e., 3(i) or 3(ii) would become redundant.

VII-(D) The public interest enshrined under the Schemes:
20. Under both the schemes, as already observed, the Government, in the public interest without compromising with the revenue of the State, notified certain incentives for deferral or waiver of sales tax on certain conditions including that of obtaining Eligibility Certificate from the District Industries Centre/SIPCOT, by exercising the statutory power referred to above, with a view to boost industrialisation in both the economically Backward and Most Backward taluks of the State and thereby to improve the productivity of the State, to maintain economic unity, to maintain a sustainable growth in productivity, to enhance the gainful employment and to achieve the optimal utilization of human resources so that the economy, industry, trade and commerce and the standard of living of the subjects of the State would grow and improve in all spheres, unit-wise which would qualify the country to compete globally in the matter of industrialisation.

VII- (E) STATUTORY EFFECT OF ELIGIBILITY CERTIFICATES
AND AGREEMENTS

21.1. We have already held that since no room is provided for method and machinery for implementation of the schemes in G.O.P.No.92, Commercial Taxes and Religious Endowments Department, dated 22.2.1991 and G.O.Ms.No.376, dated 27.10.1992, the Government, as an independent authority, has rightly passed the executive order, in G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994 to cover the field which is not occupied by G.O.P.No.92, Commercial Taxes and Religious Endowments Department, dated 22.2.1991 and G.O.Ms.No.376, dated 27.10.1992. Since G.O.Ms.No.119, Commercial Taxes and Religious

Endowments Department, dated 13.4.1994 is validly sustainable under Article 162 of the Constitution of India, the eligibility certificates granted pursuant to G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994 and also the agreements entered thereunder shall also have the statutory force. Consequently, any violation of the directions in the eligibility certificates as well as the conditions mentioned in the agreements entered thereunder will enable the Government to deny the benefit conferred under the Sales Tax Deferral Scheme as well as Sales Tax Waiver Scheme.

21.2. With the above background, let us analyse the alleged controversial directions, mentioned in G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994 and qualifications prescribed in the Eligibility Certificates and the terms and conditions incorporated in the consequential agreements, which are with the risk of repetition referred to hereunder:

(a) Directions found in G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994:

i) The Industry will be eligible for sales tax deferral only if in a financial year production exceeds the base production volume which is the highest annual production in the 3 years prior to expansion.

ii) When the actual production in the industry in any financial year exceeds the base production volume, the industry would be eligible for deferral of sales tax for sales made in that year in excess of the base sales volume under Tamil Nadu General Sales Tax, which is the highest of the actual annual sales in the last 3 years prior to expansion.

iii) The above conditions are applicable in cases where expansion units is a separate unit located elsewhere or a part of the existing plant.

iv) The specification of base production/sales volumes are applicable even in the case of allegedly new unit having been started by the same management or ownership or where the substantial controlling capital is put in by the same ground of companies.

v) The base production volume and the base sales volume will have to be worked out and incorporated in the eligibility certificates at the time of issue by SIPCOT and District Industries Centres."

(b) Relevant paragraphs of the Eligibility Certificates:
(in the matter of M/s.India Cements Eligibility Certificate dated 13.2.1998):

5.3. The company is eligible for deferral of sales tax only on the increased volume of production/sale. For the purpose of determining the increased volume of production, the base figure would be the highest of the volume of production/sale in the company in any one of the year during the last 3 years. Till reaching the volume of production/sale specified earlier the company would continue to pay tax and any liability in excess of the production/sale specified above alone will be eligible for deferment. The highest production/sales achieved by the company prior to the proposed expansion/ diversification in the last three years is:

Portland cement production in lakh tonnes - 25.86 (95-96) / S.T.O. - Rs.72882 lakhs (1996-97).

Production details

Cement plant Location Qty. in lakh tonnes

Sankar Nagar Tamil Nadu 10.60
Sankari Durg Tamil Nadu 6.09
Chilamkur A.P. 9.21
25.86

Sales turnover details:

Cement plant Sales within Sales outside Rs.in lakh
location Tamilnadu Tamilnadu Total

Sankar nagar-
Tamil Nadu 10926 19970 30896
Sankari Durg-
Tamil Nadu 7731 8644 16375
Chilamkur A.P. 13326 11923 25249
Add price 31983 40537 72520
Difference 362 -- 362
32345 40537 72882

(in the matter of M/s.Hindustan Motors Limited Eligibility Certificate dated 22.12.1998):
10.The company is eligible for waiver of sales tax only on the increased volume of production/sale. For the purpose of determining the increased volume of production, the base figure would be the highest of the volume of production/sale in the company in anyone of the year during the last 3 years. Till reaching the volume of production/sale specified earlier the company would continue to pay tax and any liability in excess of the production/sale specified above alone will be eligible for deferment. The highest production/sales achieved by the company units set up in Tamil Nadu prior to the proposed expansion / diversification in the last three year is: Earth moving equipment = 646, Power Shift Transmission Equipment = 1027/ Rs.37593.05 lakhs of 1997-98.

Production Sales T.O.
(in nos.) Rs.(in lakhs)

Earth Moving
Equipment
Division at
Thiruvallur 646 34143.45
Power Products
Division at Hosur 940 3449.60

1586 37593.05

(c) Relevant clauses of the agreements:
(in the matter of M/s.India Cements Agreement dated 12.4.2000):
i) the company is eligible for deferral of sales tax on the increased volume of production. For the purpose of determining the increased volume of production, the base figure shall be the highest of the volume of production/sales in the company in any one of the year during the last 3 years period preceding the date of commencement of deferral.
ii) the company has to go on paying the tax to the level of base volume of production/sales and once it reaches this level, then any further tax liability will be eligible for deferral of sales tax.

iii) based on the above, the holder of this E.C. will be eligible for deferral of sales tax not exceeding Rs.270.21 Crores (Rupees Two Hundred and Seventy Crores and Twenty one Lakhs only) interest free for TWELVE YEARS from the month in which the holder's unit commenced its commercial production i.e. from 1.7.1997 to 31.5.2009.

(in the matter of M/s.Hindustan Motors Limited Agreement dated 12.4.2000):

3. The party of the second part shall not alienate/or dispose or encumber or lease out the said fixed assets until the period of waiver nor shall be/they remove the fixed assets from the unit's premises.

21.3. Reading both the sources of the scheme, viz., G.O.P.No.92, Commercial Taxes and Religious Endowments Department, dated 22.2.1991 and G.O.Ms.No.376, dated 27.10.1992 as well as the regulatory procedure prescribed under G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994, the qualifications prescribed in the Eligibility Certificates and terms and conditions incorporated in the consequential agreements harmoniously, the following resultant features are derived at:

i.The existing industries are at liberty to apply for the benefit of deferral of sales tax or waiver of sales tax either by setting up the expansion units or diversified units in any of the most backward or backward taluks after getting necessary Eligibility Certificate from the General Manager, District Industries Centre/SIPCOT.

ii.Similarly, the new industries are also at liberty to apply for the benefit of deferral/waiver of sales tax by setting up the units in any of the most backward or backward taluks after getting necessary Eligibility Certificate from the General Manager, District Industries Centre/SIPCOT.

iii. The Government have jurisdiction to consider the application and grant concessions as provided under the scheme sanctioned in G.O.P.No.92, Commercial Taxes and Religious Endowments Department, dated 22.2.1991 and G.O.Ms.No.376, dated 27.10.1992 to the aspiring applicants who seek the exemption either under the deferral of sales tax scheme or under the waiver of sales tax scheme, which jurisdiction can neither be waived nor created by the consent of the applicants;

iv.G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994 which prescribes the regulatory procedure for implementing the scheme. The applicants who seek the concession are at liberty to waive either by conduct or by agreement, as the said regulatory procedure purely depends upon the compliance of the directions provided under G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994 and qualifications prescribed in the Eligibility Certificate and the terms and conditions incorporated in the consequential agreement.

21.4. The qualifications prescribed in the Eligibility Certificates and the terms and conditions mentioned in the consequential agreements entered between the dealers and the Revenue which are issued in consonance with the directions of G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994 are nothing but the regulatory procedures, prescribing the method and machinery to implement the object behind the schemes, whether it is deferral or waiver issued in G.O.P.No.92, Commercial Taxes and Religious Endowments Department, dated 22.2.1991 and G.O.Ms.No.376, dated 27.10.1992 which has the statutory force.

21.5. A combined reading of Clauses 3 (i) and (ii) of G.O.Ms.No.119, Commercial Taxes and

Religious Endowments Department, dated 13.4.1994 and Paragraph 5.3 of Eligibility Certificate dated 13.2.1998 in the case of M/s.India Cements Ltd. and Para 10 of Eligibility Certificate dated 22.12.1998 in the case of M/s.Hindustan Motors Limited and the terms and conditions incorporated in the consequential agreements in both the cases, would go to show that the word "when" mentioned in clause 3 (ii) of G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994, if read as "if" or "after" whatever the case may be, the BPV which is the highest production of the last three years prior to the expansion should be achieved by the holder of the Eligibility Certificate for every assessment year of the total number of years, viz., 12 years in the case of deferral and 5 years in the case of waiver, besides reaching BSV in that particular year. By insisting that the BSV should also be reached, the Revenue of the State gets protected in every assessment year during the entire period of deferral or waiver.

21.6. To determine the date from which such benefit of deferral or waiver would follow, viz., from the date of reaching BPV or from the date of reaching BSV, or whichever is earlier or whichever is later, in the light of the intention behind the schemes, Clause 3(ii) of G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994 cannot be construed to mean that the benefit would flow only from the date of reaching the BPV, not from the date of reaching the BSV, as the object of the schemes is to increase the productivity, but without compromising with the revenue of the State.

21.7. As per the Rules of interpretation applicable to the case of fiscal laws, the words must say what they mean and nothing should be presumed or implied. Applying the said plain interpretation and reading the word "when" even plainly as "when", the blending of two clauses 3(i) and 3(ii) as suggested by us above, by way of harmonised and reasonable construction, is inevitable, as the same cannot be ruled out keeping in mind the intention behind the schemes and the goal to achieve the same in the public interest, viz., to improve the production in the most Backward and Backward Areas, certainly without compromising with the revenue of the State, in whatever manner, the word "when" found in Clause 3(ii) is read whether as "when" or "if" or "after", as the case may be. The above interpretation is, in our considered opinion, unavoidable because any other construction would lead to absurdity frustrating the object behind the scheme.

VII- (F) RELEVANCY AND APPLICABILITY OF THE DECISION OF THIS COURT IN W.P. No.18199 of 1999, dated 5.12.2001 (between Tvl.Madras Cements Ltd. and State of Tamil Nadu rep. By Secretary to Government, Commercial Taxes and Religious Endowment Department, Fort St.George, Chennai 600 009 and 3 others):

22.1. Yet another point which has to be answered is the relevancy and the applicability of the decision of this Court in W.P. No.18199 of 1999, dated 5.12.2001 (between Tvl.Madras Cements Ltd. and State of Tamil Nadu rep. By Secretary to Government, Commercial Taxes and Religious Endowment Department, Fort St.George, Chennai 600 009 and 3 others), to the cases on hand.

22.2. The Writ petition No.18199 of 1999 arose against the order of the Taxation Special Tribunal dated 5.11.1999 in O.P.Nos.1347 & 1348 of 1999 (between Tvl.Madras Cements Ltd. and State of Tamil Nadu rep. By Secretary to Government, Commercial Taxes and Religious Endowment Department, Fort St.George, Chennai 600 009 and 3 others), whereunder the Special Tribunal held as follows:

"The only interpretation that could be given to the said clause which is reflected in the eligibility certificate and the agreement entered into by the petitioner is, that both the Base Production Volume and Base Sale Volume should have to be reached before the petitioner could claim deferral of sales tax. In the alternative it means that if the Base Sale Volume had been reached earlier, but the base production volume had not been reached, the petitioner will not be entitled to get the

deferral facility. It is only after the Base Production Volume is reached that the right of deferral accrues. Vice-versa if the base Production Volume had been reached later, it is only after the base sale volume is reached that the petitioner will be entitled to get the deferral facility. This in effect means whichever condition is reached later then alone the petitioner gets the right to defer the payment of sales tax."

22.3. No doubt, the order of the Special Tribunal dated 5.11.1999 made in O.P.Nos.1347 and 1348 of 1999 was confirmed by the Division Bench of this Court by order dated 5.12.2001 in W.P.No.18199 of 1999, (Madras Cements case). By superficious application of the said view of the Special Tribunal, merely for the reason that the same was confirmed by this Court in the order dated 5.12.2001, referred to above, the Special Tribunal, by order dated 19.4.2002 made in O.P.No.322 of 2002, in M/s.India Cements Ltd. held as follows:

"In terms of various Government Orders and also in terms of the various judicial pronouncements on the subject, it is clear that the petitioner's company should have reached both the Base Production volume and Base Sale Volume before claiming deferral of sales tax. It is only after the Base Production volume and the Base Sale volume have been reached, the petitioner will be entitled to get the deferral benefits.

The Eligibility Certificate does not exist in vacuum. G.O.Ms.No.119 makes a clear mention of the Eligibility Certificate to be issued by the SIPCOT. Para 5.3 of the Eligibility Certificate only stipulates certain requirements to be fulfilled before the petitioner company could avail of the benefits of the deferral scheme. The validity of para 5.3 of the Eligibility Certain has already been upheld by a Division Bench of the Hon'ble High Court of Madras and hence, this Special Tribunal has nothing more to add to what has been said on this subject by the Division Bench of the Madras High Court.

The petitioner, by not following the deferral scheme in letter and spirit, availed of deferral in excess to the tune of Rs.5873.51 lakhs for which the respondent issued a notice. The sales tax deferral scheme is a beneficial scheme meant for promotion of industry and correction of regional imbalance in economic growth. The petitioner cannot take undue advantage of the beneficial scheme and seek to derive unextended benefits by taking advantage of the beneficial scheme."

22.4. The view taken in the M/s.India Cements Ltd. deferral of sales tax case was also incidentally referred to and applied by the Tribunal in Hindustan Motors Limited case, but a careful analysis of the issue in Madras Cements Case, referred supra, with the cases on hand would reveal that the issue in the present case is totally different from that of the Madras Cements Case, referred supra. The question agitated and decided by the Division Bench of this Court by order dated 5.12.2001, in W.P.No.18199 of 1999 was whether a dealer is entitled to estimate his turnover for the whole year at the beginning of the year and can make a rational estimate of the turnover in excess of base production from month to month and file a return accordingly, and the Division Bench negatived the same confirming the earlier order of the Taxation Special Tribunal dated 5.11.1999 made in O.P.No.1347 and 1348 of 1999. But, the issue in the present batch of cases is whether the holder of Eligibility Certificate is entitled to the benefit of deferral of sales tax or waiver of sales tax, if he achieves the base production volume in any financial year during the period of deferral or waiver for the sales made in excess of base sales volume, and the said issue was not at all raised in the Madras Cements case before this Court and therefore, the order dated 5.12.2001 confirming the order dated 5.11.1999 cannot be a binding precedent to decide the issue before us, nor to ignore the circular dated 1.5.2000, which is in all fours binding on the Revenue.

VII-(G) BINDING & SUPPORTING EFFECT OF THE CIRCULAR DATED 1.5.2000 MADE UNDER SEC.28A OF TNGST ACT

23.1. Appreciating the scope and object of both the schemes, in letter and spirit, the Government themselves, in circular dated 1.5.2000, invoking the powers conferred under Section 28A of TNGST Act, have rightly clarified the position as to when such benefit of deferral of sales tax scheme or waiver of sales tax scheme would follow, viz., the date of reaching of BPV or BSV, which ever is earlier or whichever is later.

23.2. The relevant portion of the circular dated 1.5.2000 reads as under:
"As per decision of Tamil Nadu Taxation Special Tribunal in O.P.1229/1230/1231/98 dt. 23.11.1998, Mercury Fittings (P) Ltd., it was held that G.O.1998/CTRE/13.4.1992 contemplated the liability to pay tax with reference to Base Production Volume or Base Sales Volume whichever is reached earlier and the liability for deferral is only with reference to Volume of Sales and not with reference to taxes paid on sales for the base year. Thus all Deputy Commissioners and Assistant Commissioners shall thoroughly verify all expansion cases and satisfy themselves that taxes have been paid until the BPV/BSV has been achieved."

23.3. That apart, it is a settled law that the clarification issued by the Revenue by way of circular is binding on them.

23.4. In Mohan Breweries & Distilleries Ltd. v. Commercial Tax Officer (139 STC 477) a Division Bench of this Court in which one of us was a party (P.D.DINAKARAN,J.), interpreting the power of issuing clarifications u/s.28A of the TNGST Act, held as follows:

"....the law is well settled on the point in the light of the following decisions, which are discussed hereunder.

8.6.2. The Apex Court in STATE BANK OF TRAVANCORE v. C.I.T., [1986] 158 ITR 102 held that even though the clarifications issued by the revenue being executive in character cannot alter the provisions of the Act, since they are in the nature of concessions, they can always be prospectively withdrawn. In the instant case, even though the clarification dated 9.11.1989 is executive in nature, the concessions given to the assessee could be withdrawn only prospectively, but not retrospectively because, such executive circulars are binding on the authorities, as held by the Apex Court in KESHAVJI RAVJI & CO. v. COMMISSIONER OF INCOME TAX, [1990] 183 ITR 1. In KESHAVJI RAVJI & CO. v. COMMISSIONER OF INCOME TAX, referred supra, while dealing with Section 119 of the Income Tax Act, which is pari materia to Section 28-A of the Tamil Nadu General Sales Tax Act, the Apex Court held that the benefits of such circulars to assessees have been held to be permissible even though the circulars might have departed from the strict tenor of the statutory provision and mitigated the rigour of the law. That apart, the clarification dated 27.12.2000 gains a statutory force in view of Section 28-A of the Act, which was inserted by the Tamil Nadu Act 60 of 1997, which came into force with effect from 6.11.1997.

8.6.3. In COLLECTOR OF CENTRAL EXCISE, PATNA v. USHA MARTIN INDUSTRIES, [1998] 111 STC 254, three Judges of the Apex Court, held that when the Central Board of Excise and Customs made all others to understand a notification in a particular manner and when the latter have acted accordingly, it is not open to the revenue to turn against such persons on a premise contrary to such instructions, and such circulars would be binding on the department.

8.6.4. The Apex Court in PAPER PRODUCTS LTD. v. COMMISSIONER OF CENTRAL EXCISE, [1999] 112 ELT 765, while interpreting Section 37-B of the Central Excise Act, 1944 which is pari materia

to Section 28-A of the Tamil Nadu General Sales Tax Act held that circulars issued by the Central Board of Excise and Customs are binding on the departmental authorities and they cannot take a contrary stand, and that the department cannot repudiate a circular issued by the Board on the basis that it was inconsistent with a statutory provision and further held that the assessee can contest the validity or legality of such Departmental Circulars or Instructions; the Department do not have a right to file an appeal against the correctness or binding nature of a circular; the Department's actions have to be consistent with the circulars; and that consistency and discipline are of far greater importance than winning or losing Court proceedings.

8.6.5. In UCO BANK v. C.I.T., [1999] 237 ITR 889, the Apex Court held that the circular issued by the revenue under Section 119 of the Income Tax Act are binding on the revenue and such circulars are meant for ensuring proper administration of the statute and they are designed to mitigate the rigours of the application of a particular provision of the statute in certain situations by applying a beneficial interpretation to the provision in question.

8.6.6. In COMMISSIONER OF SALES TAX, U.P. v. INDRA INDUSTRIES, [2001] 122 STC 100, the Apex Court held that a circular issued by the Sales Tax authorities is binding on the taxing authorities and the taxing authority cannot be heard to advance an argument that is contrary to that interpretation.

8.6.7. In COMMISSIONER OF INCOME TAX v. KELVINATOR OF INDIA LTD., [2002] 256 ITR 1, it was held that the Board has power to issue circulars under Section 119 of the Income Tax Act and it is trite that circulars which are issued by the Central Board of Direct Taxes are legally binding on the revenue.

8.6.8. The Constitution Bench of the Apex Court in COLLECTOR OF CENTRAL EXCISE, VADODRA v. DHIREN CHEMICAL INDUSTRIES, [2002] 126 STC 122, held that if there are circulars which have been issued by the Central Board of Excise and Customs which place a different interpretation upon the said phrase, that interpretation will be binding upon the revenue. Similar view was taken by the Apex Court in COLLECTOR OF CENTRAL EXCISE, VADODARA v. DHIREN CHEMICAL INDUSTRIES, [2002] 143 ELT 19.

8.6.9. In COMMISSIONER OF CUSTOMS, CALCUTTA v. INDIAN OIL CORPORATION LTD., [2004] 165 ELT 257, the Apex Court held that the circulars issued by the revenue under Section 37-B of the Central Excise Act, 1944 (which is pari materia to Section 28-A of the Act) are binding primarily on basis of language of statutory provisions buttressed by need of adjudicating officers to maintain uniformity in levy of tax/duty throughout the country and not on the basis of promissory estoppel, and that when a circular remains in operation, the revenue is bound by it and cannot be allowed to plea that it is not valid nor that it is contrary to the terms of statute.

8.6.10. It is, therefore, clear that even though the clarification dated 9.11.1989 is executive in nature, the same is binding on the authorities till the concessions given to the petitioner under the clarification were withdrawn, which could be done only prospectively, viz., in the instance case, with effect from 28.1.2002, and the revenue could not refuse the benefit of the clarifications dated 9.11.1989 and 27.12.2000 in respect of levy of purchase tax under Section 7-A of the Act for the impugned assessment year 1996-97.

8.7. For all these reasons, we are convinced that even though the purchase turnover with respect to the purchase of empty bottles from the unregistered dealers under bought note can be charged for purchase tax under Section 7-A of the Act, the petitioner is entitled for the benefit of the clarifications dated 9.11.1989 and 27.12.2000 till the same is withdrawn prospectively by the

clarification dated 28.1.2002 and therefore, the impugned levy of purchase tax on the purchase turnover for the purchase of empty bottles from unregistered dealers under Section 7-A of the Act is illegal."

23.5. The decision in Mohan Breweries & Distilleries Ltd. Case, cited supra, has been followed by the I Bench of this Court in an unreported judgment dated 19.9.2006 in W.A.No.1101 of 2006 and another (between Om Plastics and The Deputy Commercial Tax Officer) wherein it is held that the circular issued under section 28A of the TNGST Act would have prospective application.

23.6. In view of the law as settled above, sidelining the circular dated 1.5.2000, and tilting on the decision of the Special Tribunal in O.P.No.1347 and 1348 of 1999, dated 5.11.1999, which we have already held as inappropriate, in our considered opinion, is a total misconception. Therefore, as per the circular dated 1.5.2000, the holder of the Eligibility Certificate shall be entitled to the benefit of the schemes on reaching the BPV or BSV, whichever is reached earlier, which again supports the harmonious and reasonable construction by blending of Clauses 3(i) and 3(ii) of G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994, as held above.

VII-(H) QUANTIFICATION OF THE BENEFITS UNDER THE WAIVER SCHEME IN THE CASE OF DIVERSIFIED UNITS MANUFACTURING DIFERRENT PRODUCTS:

24.1. Even though the legal and logical conclusion derived by harmonious construction of the statutory provisions relating to the deferral of sales tax in the case of expansion units is equally applicable to diversified units as well as new units for waiver of sales tax, the case of M/s.Hindustan Motors Limited stands on different footing for the reason that the production of the diversified unit is totally different from that of the existing industry, as, the existing unit, viz., Earth Moving Equipments Division was manufacturing earth moving equipments and the diversified unit was set up to manufacture lancer cars. Further, the production and sale of earth moving equipments cannot be equated with that of lancer cars as fairly conceded by the learned Additional Advocate General, whereas the SIPCOT adopted the benchmark of existing industry for working out BPV/BSV for the diversified unit which is irrational, unreasonable and arbitrary and therefore, the denial of the benefit of waiver of sales tax scheme on the ground that M/s.Hindustan Motors Limited has not reached BPV is unjustified.

24.2. Unfortunately, M/s.Hindustan Motors Limited themselves have chosen to approach SIPCOT on more than one occasion to amend and modify the Eligibility Certificate issued in their favour without challenging the irrational formula adopted by the SIPCOT for working out the BPV/BSV for conferring the benefit of waiver of sales tax scheme. However, when the revenue fairly concedes that the BPV/BSV fixed for the diversified unit, viz., M/s.Hindustan Motors Limited taking the highest production volume/sales for three years of the existing industry, which manufactured earth moving equipments cannot be the benchmark, it is not prudent to deny the benefit of sales tax waiver to M/s.Hindustan Motors Limited on that ground.

24.3. Tax and equity are strangers. Equity cannot be relied on even by the Revenue to tax an amount which is not taxable under the statute, and therefore, tax cannot be levied on the basis of equity. Nor tax can be evaded placing reliance on the equity. [vide: Kabil Mohan v. C.I.T. (1999) 1 SCC 430].

24.4. When the State is empowered or competent to grant exemption of sales tax exercising relevant statutory powers in the public interest, and such power to grant includes the power to withdraw and modify the grant, the Government is equally competent to modify or withdraw the grant for some

reason or other including the violation of conditions to the grant. It is a settled law that what was granted by exemption notification would therefore be withdrawn unless the Government was precluded from doing so on the ground of promissory estoppel which principle was itself subject to the consideration of equity and public interest. Once the Government have come forward with clear and unambiguous new industrial policy to achieve the goal as referred to above, such policy and scheme framed exercising statutory powers is undisputably in the public interest [State of Rajasthan v. J.K.Udaipur Udyog Ltd., (2004) 7 SCC 673]. Therefore the Government in the same public interest is under obligation to pass appropriate orders in the case of M/s.Hindustan Motor Limited to modify or revoke the grant.

24.5. However, the fact remains that M/s.Hindustan Motors Limited has chosen to sell the Earth Moving Equipments Division to M/s.Caterpillar Pvt. Ltd. after availing the benefit of waiver, but, during the period of waiver scheme and thereby committed a violation of the terms and conditions of the consequential agreement. Once we are convinced that the BPV/BSV of the existing industry that manufactured earth moving equipments cannot be the basis for the diversified unit manufacturing Lancer Cars, there is no other option except to treat the diversified unit as new unit, set up for manufacturing totally a new product which is also entitled to the benefit of the waiver scheme. Therefore, applying the reasonable construction, in order to achieve the object of the scheme, we are satisfied to hold that M/s.Hindustan Motors Limited is entitled to the benefit permissible for the new unit. But, this Court cannot undertake such an exercise invoking Article 226 of the Constitution of India, as the power of judicial review conferred under Article 226 of the Constitution of India as repeatedly held by the Apex Court is only decide as to the error in the decision making process, but not the decision itself.

24.6. Of course an argument was advanced on behalf of M/s.Hindustan Motors Limited that on account of the benefit of waiver given to them, they had not collected sales tax from the consumers as per the terms of the Eligibility Certificate and therefore, they should not be made liable for the sales tax on the basis of the corrigendum for the period during which they had not collected sales tax. But, we are unable to appreciate the same. The circumstances under which M/s.Hindustan Motors Limited having availed the benefit of waiver of sales tax scheme, had not collected sales tax from the customers are of no consequence, as the primary liability to pay sales tax is on the seller. Therefore, the Government is entitled to recover the sales tax, irrespective of the fact that the beneficiary of the scheme might have lost the chance of passing the liability to pay sales tax on the purchaser. This again takes us to the root of the issue, viz., whether the denial of the benefits of the waiver of sales tax scheme for non-compliance of the qualifications prescribed in clause (10) read with Clause (13) of the eligibility certificate is justified and sustainable in law; which we have already answered in favour of Hindustan Motors Limited as the parameter adopted by the SIPCOT for determining the BPV and BSV conferring the benefit of waiver scheme is illogical, irrational, arbitrary and therefore, illegal as the production of the diversified unit, viz., Lancer Cars, is totally different from that of the existing unit, viz., Earth Moving equipments. Hence, we are of the considered opinion that, to uphold the object of the new industrial policy and to give effect to the object of the scheme in letter in spirit, the Government is under a statutory obligation to consider the case of Hindustan Motors Limited on merits, treating the diversified unit as a new unit and to grant appropriate relief, because such an exercise cannot be done by this Court while exercising the power of judicial review conferred under Article 226 of the Constitution of India, because power to grant such appropriate relief requires to be decided based on several materials and details, both relating to production and sale, which are sought to be achieved under the new industrial policy and also requires a careful appreciation of the same before taking appropriate decision in the matter, which power, in our considered opinion is fully within the domain of the State and cannot be usurped by us, by exercising the power of judicial review, whatever the reason may be. [State of Rajasthan v. J.K.Udaipur Udyog Ltd., (2004) 7 SCC 673].

VII-(I) INTEREST

25.1. On the submissions made on both the sides regarding interest on the tax payable by the dealer or the interest on the amount refundable by the Revenue, as the case may be, it is apt to refer to the following provisions of TNGST Act and CST Act.

TNGST Act:

Section 24. Payment and recovery of tax:

(1) xxx

(2) xxx

(3) On any amount remaining unpaid after the date specified for its payment as referred to in sub-section (1) or in the order permitting payment in instalments, the dealer or person shall pay, in addition to the amount due, interest at one and half per cent per month of such amount for the first three months of default and at two per cent per month of such amount for the subsequent period of default:

Provided that if the amount remaining unpaid is less than one hundred rupees and the period of default is not more than a month, no interest shall bepaid:

Provided further that where a dealer or person has preferred an appeal or revision against any order of assessment or revision of assessment under this Act, the interest payable under this sub-section, in respect of the amount in dispute in the appeal or revision, shall be postponed till the disposal of the appeal or revision, as the case may be, and shall be calculated on the amount that becomes due in accordance with the final order passed on the appeal or revision as if such amount had been specified in the order of assessment or revision of assessment as the case may be.

24(3-A). Where a dealer submits the prescribed return within ten days after the expiry of the prescribed period, he shall also pay, in addition to the amount of tax due as per his return, interest at two per cent of the tax payable for every month or part thereof.

24(4). Where the tax paid under this Act is found to be in excess on final assessment or revision of assessment, or as a result of an order passed in appeal, revision or review, the excess amount shall be refunded to the dealer after adjustment of arrears of tax, if any, due from him. Where the excess amount is not refunded to the dealer within a period of ninety days from the date of the order of assessment or revision of assessment and in the case of order passed in appeal, revision or review within a period of ninety days from the date of receipt of the order, the Government shall pay by way of interest, where the amount refundable is not less than one hundred rupees, a sum equal to a sum calculated at the rate of one per cent or part thereof of such amount for each month or part thereof after the expiry of the said period of ninety days.

Explanation For the purpose of this Section, the expression "order passed in appeal, revision or review" shall not include order passed in such appeal, revision or review with direction to make fresh assessment order.

CST Act:

Section 9.Levy and Collection of Tax and Penalties.-

(1) ....

(2) Subject to the other provisions of this Act and the Rules made thereunder, the authorities for the time being empowered to assess, re-assess, collect and enforce payment of any tax under the General Sales Tax law of the appropriate State, shall, on behalf of the Government of India, assess, re-assess, collect and enforce payment of tax, including any interest or penalty payable by a dealer under this Act as if the tax or interest or penalty payable by such a dealer under this Act is a tax or interest or penalty payable under the General Sales Tax law of the State; and for this purpose they

may exercise all or any of the powers they have under the General Sales Tax law of the State; and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, refunds, rebates, penalties, charging or payment of interest, compounding of offences and treatment of documents furnished by a dealer as confidential shall apply accordingly:

Provided that if in any State or part thereof there is no General Sales Tax law in force, the Central Government may, by Rules made in this behalf, make necessary provision for all or any of the matters specified in this sub-section.

(2-A) All the provisions relating to offences interest and penalties (including provisions relating to penalties in lieu of prosecution for an offence or in addition to the penalties or punishment for an offence but excluding the provisions relating to matters provided for in Section 10 and 10-A) of the General Sales Tax law of each State shall, with necessary modifications, apply in relation to the assessment, reassessment, collection and the enforcement of payment of any tax required to be collected under this Act in such State or in relation to any process connected with such assessment, re-assessment, collection or enforcement of payment as if the tax under this Act were a tax under such Sales Tax law.
(2-B) If the tax payable by any dealer under this Act is not paid in time, the dealer shall be liable to pay interest for delayed payment of such tax tax and all the provisions for delayed payment of such tax and all the provisions relating to due date for payment of tax, rate of interest for delayed payment of tax and assessment and collection of interest for delayed payment of tax, of the General Sales Tax law of each State, shall apply in relation to due date for payment of tax, rate of interest for delayed payment of tax, and assessment and collection of interest for delayed payment of tax under this Act in such States as if the tax and the interest payable under this Act were a tax and an interest under such Sales Tax law."

25.2. Section 24(3) of the TNGST Act contemplate that the dealer is liable to pay interest at 24% p.a. for the period of default in addition to the amount due. Section 24(4) of the TNGST Act also provides interest at the rate of 12% p.a. on the amount to be refunded by the Revenue to the dealer. Similarly, the provisions of CST Act provide for interest in the case of default of either of the parties.

25.3. But in view of the submissions made on behalf of both sides that the dealer as well as the Revenue would forego the interest on the tax payable by the dealer or on the amount refundable by the Revenue, as the case may be, we do not propose to pass any orders in this regard.

VIII - FINDINGS

PART-A

(In the matter of M/s.India Cements Ltd.)

26.1. In view of the elaborate discussions made above, we are of the considered opinion that the benefit of deferral of sales tax for the sales made in excess of the Base Sales volume cannot be denied to the holder of the Eligibility Certificate if the actual production of the industry in any financial year during the period of deferral exceeds the Base Production volume. Therefore, the

directions in clauses 3(i) and 3(ii) of G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.4.1994 and para 5.3 of Eligibility Certificate dated 13.2.1998, if read harmoniously, the only conclusion that would follow is that the dealer will be eligible for sales tax deferral in any financial year if the production exceeds the Base Production volume for the sales made in that year in excess of the Base Sales volume or Base Production Volume, whichever is earlier.

Part-B
(In the matter of Hindustan Motors Limited)

26.2. Similarly, following the above detailed discussions made above, we are of the considered opinion that Para 10 of the Eligibility Certificate is not applicable to M/s.Hindustan Motors Limited as the production in the diversified unit is entirely different from the existing industry which was manufacturing earth moving equipments which industry was subsequently sold to M/s.Caterpillar India Pvt. Ltd. and in such circumstances, the Lancer Car plant of M/s.Hindustan Motors Limited should be considered as a new plant, and the Government is therefore, directed to consider the case of M/s.Hindustan Motors Limited in the light of the findings rendered above and taking note of the fact that the dealer has subsequently sold the existing industry, viz., Earth moving Equipments Division to M/s.Caterpillar India pvt. Ltd. and pass orders on merits within a period of three months from the date of receipt of copy of the order.

IX. RESULT
(i) W.P.Nos.13697 & 13698 of 2002 in the matter M/s.India Cements) :
(a) The issue, viz.,
"in the case of expansion unit of an existing industry, whether the industry will be eligible for sales tax deferral in any financial year if the production exceeds the Base Production Volume (in short, 'BPV') for the sales made in that year in excess of the Base Sales Volume (in short, 'BSV')"

is answered in the affirmative;

(ii) consequently, the government is directed to pass appropriate orders refunding the deposit made by M/s.India Cements Ltd., pursuant to the interim orders of this Court in the above writ petitions, after appropriating, the dues, as per law, if any, payable by M/s.India Cements Ltd. as on date, within four weeks from the date of receipt of copy of this order; and

(iii) the petitions are ordered accordingly setting aside the order of the Taxation Special Tribunal impugned in the writ petitions.

(ii) W.P.Nos.37042, 40030, 40031 & 44733 of 2002 and 3230, 3231, 3232, 3233, 3234 & 21162 of 2003 (in the matter of M/s.Hindustan Motors Limited):

(a) Para 10 of the Eligibility Certificate dated 22.12.1998 is not applicable to M/s.Hindustan Motors Limited;

(b) the issue, viz.,

"in the case of diversified unit of an existing industry, whether the industry will be eligible for sales tax waiver in any financial year if the production exceeds the Base Production Volume (in short, 'BPV') for the sales made in that year in excess of the Base Sales Volume (in short, 'BSV'), despite the fact that the production of the existing unit and diversified unit are totally different and the existing unit was subsequently sold to a third party, viz., M/s.Caterpillar India Pvt. Ltd."

is answered accordingly;

(c) consequently, the Government is directed to pass appropriate orders in the matter of Hindustan Motors Limited (i) giving the benefit of waiver of sales tax scheme treating the Lancer Car Unit as a new unit of Hindustan Motors Limited, in the light of the finding rendered above; and (ii) refunding the deposits made by Hindustan Motors Limited, pursuant to the interim orders of this Court in the above writ petitions, after appropriating the dues, as per law, if any, payable by M/s.Hindustan Motors Limited as on date, within a period of three months from the date of receipt of copy of this order; and

(c) with the directions issued above the writ petitions are ordered setting aside the order of the Taxation Special Tribunal impugned in the writ petitions.

na/sasi/kpl/sra